

# The Suspension of the Habeas Corpus Act in England

by Clarence Cory Crawford

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3 Hill's Reports, 647 sq. (A copious bibliography of the Habeas Corpus in America.)

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## Chapter 1

The most important chapter of the English Constitution is the one devoted to the Right to personal liberty. Without ample guarantee for this most sacred right of the people, government whose ultimate end must ever be the highest welfare of those governed, inevitably degenerates into a mere engine of oppression. The English People enjoy the honor and distinction of having formed through the course of centuries a type of government which guarantees to each member of its society to a greater extent than among other nations, the greatest degree of personal freedom consistent with an equal enjoyment of the same right by others. The English guarantees of personal liberty unlike those of other countries are not founded upon written law, but upon custom and practices extending back to the very beginnings of English history. The laws on these subjects found in the Statute books are merely confirmations of existing customs, or remedies for defects growing out of changing conditions.

"The right to personal liberty as understood in England," says Dicey, "means in substance a prisoner's right not to be subjected to imprisonment, arrest, or other physical coercion in any manner that does not admit of legal justification."

Among the many guarantees of personal liberty, the most important is the right enjoyed by everyone held in physical detention to demand a writ of Habeas Corpus. As we shall presently consider the details of the legal process known as Habeas Corpus, it will be sufficient for the moment to say that the writ is issued by a court of competent jurisdiction to an officer or any person holding another in custody commanding him to bring at once the body of the prisoner before the court and show the reasons for his detention. If in the judgement of the court the charges are not sufficient to justify detention the prisoner is discharged. But if the alleged offense is a bailable one, he is released on furnishing suitable bail. Otherwise he is remanded to prison again.

The right to the writ of Habeas Corpus is popularly, though erroneously ascribed to the famous statute bearing that name passed by Parliament in 1679.. This act however served merely to correct certain defects in and abuses of a practice known at Common Law since Anglo Saxon times. "From the earliest records of English law," says Hallam, "no freeman could be detained in prison except upon criminal charge, or conviction, or civil debt."<sup>2</sup> Our meager knowledge of Anglo Saxon institutions fails to reveal to us the means by which this principle was carried out in practice. It seems quite probable however that the punishment by imprisonment was but little used during the early period. The well known custom of requiring everyone on pain of outlawry to furnish security for his conduct rendered imprisonment before trial except in cases when the liberty of the accused endangered the safety of the

1 Dicey pp. 184

2 Hallam pp. 426

(a) De odio et alia directed a sheriff to inquire whether a prisoner accused of murder was committed upon reasonable suspicion, attested in 1354. Edward Coke was of the opinion that it was revived by 42 Ed III.

Maurprie commanded the sheriff to take security for prisoner's appearance and to set him at liberty.

De homine replegiando commanded the sheriff to return or repledge, i. e., deliver prisoner from custody on bail being given for his subsequent appearance.

Medley. p. 386

community unnecessary. If <sup>must</sup> imprisoned was little used there was little danger of its abuse.

With the coming of the Normans, the status of personal liberty was considerably modified. Though at least nominally administering justice through the old channels, the Normans introduced many new practices. It was an age of violence, and the Norman nobles and barons seized the opportunity of violating personal freedom for selfish purposes. But the prerogatives of the crown having been greatly extended, the king became the source, the fountain of justice.<sup>2</sup> It was in him that personal liberty must find its protection. Special writs took the place of the old common law practices. Four kinds of special writs seem to have appeared with the coming of the Normans. 1. de otis et atis, 2. mainprize or manucaptis, 3. de homini replegiando, 4. Habeas Corpus.<sup>3, a</sup> These writs issued from the king's bench not as rights but as privileges. If the king was himself just and his authority obeyed, these writ privileges though they would prove effective remedies against violations of personal liberty. The reigns of Stephen and John however showed but too clearly that these privileges could not be wholly relied upon. The king not only permitted, but practiced himself violations of personal liberty. It was Magna Charta that changed these privileges into rights.

Many writers find in Magna Charta the beginning of Habeas Corpus. As we have seen its principles extend back much farther. The writ issued from the King's Bench though privileges as they were had for their purpose the security of right running through all Anglo Saxon history, the personal liberty of the freeman. Magna Charta forced the king to grant as right what his immediate predecessors had extended as privileges. According to the article 39, "No freeman shall be taken or imprisoned, or dissesseid, or outlawed, or exiled or anyway destroyed nor will we go upon him, nor will we send upon him, unless by the lawful judgement of his peers, or by the law of the land." Again in article 40, we read, "To none ~~we~~, will we sell, to none will we deny the right of justice." The forgoing provision, it will be seen created no new right but confirmed those already existing. The king swore to protect the subject in his right to personal freedom.

In spite of the repeated confirmations of Magna Charta by subsequent kings, additional legislation was found necessary to check its evasion by the ever more powerful Privy Council. In the twenty-fifth year of Edward III it was enacted that,

1. Henry Adams. Anglo Saxon Law. p. 283-305-
2. Medley p. 386.
3. Medley p. 386.



"No one shall be taken by petition, or suggestion of the king or his council unless it be by indictment, or presentment, or by writ original at common law." A long list of similar statutes passed in this and succeeding reigns did good service by protecting the liberties of the subject against arrogant assumptions on the part of ambitious kings who were striving by every means to extend the monarchical sway of the crown. It became the duty of the king not merely to refrain himself from wanton violations of personal liberty, but being the fountain head of all justice to act as a positive check upon the abuses of that liberty by his subjects. The latter he no doubt willingly performed as it thereby increased that authority for which he was constantly striving; the former he was obliged to observe, bound as he was by Magna Charta and supplementary statutes.

The reader who is at all familiar with English history may naturally inquire why arbitrary and unusual imprisonments were tolerated under the Tudors and ~~Stewarts~~ <sup>Stewarts</sup>. In the first place it must be borne in mind that such violations of the subject's rights were relatively very exceptional, while in the large majority of cases the rules of common law, and supplementary statutes respecting the rights of personal liberty were strictly followed. Still we should seek to find the reason for the exceptions. Hallam enumerates five essential checks upon the king's authority at the opening of Henry VII's reign. Among these checks he says, "No man could be committed to prison but by a legal warrant specifying his offense, and by an usage nearly tantamount to constitutional right, he must be speedily brought to trial by means of regular sessions of gaol delivery." Owing to the nature of the times and the strong character of the rulers, the Tudors were successful in greatly increasing the authority of the crown, and though ~~always~~ <sup>always</sup> ~~they~~ <sup>they</sup> ~~acted~~ <sup>acted</sup> within the strict letter, they often ventured far beyond the spirit of the law. The Privy Council and particularly that branch of the council known as the Star Chamber was made ~~by~~ <sup>a</sup> powerful instrument in the hands of the Tudors to ~~further~~ their policy of absolutism. Summary jurisdiction in many cases was recognized as falling within its legal authority. It was to the abuse of this power that nearly all violations of personal liberty under the Tudors and the ~~Stewarts~~ <sup>Stewarts</sup> were due. At the desire of the king, or the council, persons odious to the government were sent before the Star Chamber and after the merest pretense of



4.

a trial were fined, tortured or imprisoned. Although guilty himself of violation of the spirit of the law, the king saw that the law was strictly observed by others. The secret of the Tudor's success lay in their tact and good judgement. They knew just how far their assumption would be tolerated by the people and retreated at the critical moment, always to their own advantage.

With the Stewarts it was wholly different. Basing their claims to authority upon Divine Right they flatly denied to the people the right to place any restriction upon the full exercise of that authority. Sadly wanting in the tact and sound judgement of their predecessors they endeavored not merely to maintain, but extend the power of the Tudors. Any law or statute which served to check, or to impede the fullest exercise of the royal will was an object, if not to be destroyed, at least to be evaded. Their will was law. Subjects must obey, but themselves the source, were above the law. People who hesitated to obey decrees were fined or imprisoned at the king's command, or order of his council. With these violent assumptions on the part of the crown came equally violent reassertions of the ancient rights of the people. It was this popular demand for more effective guards to personal liberty that produced the series of acts which culminated fifty years later in the well known Habeas Corpus Act of 1679.

We have previously mentioned four special writs which made their appearance in England about time of the Norman Conquest. From the very first the writ of Habeas Corpus seems to have proved the most effective and at length displaced the other three. At Common Law any freeman held in prison was entitled to demand of the King's Bench a writ of Habeas Corpus, commanding the person holding him in custody to bring the body of the prisoner and the warrant for his arrest before the court. He was then discharged, released on bail, or remanded ~~as the law provided~~ accordingly as the law provided. The writ from Kings Bench very early came to be issued as a right to the freeman, and legal procedure grew more complex. As time went on many defects in the Common Law provisions made their appearance. Through these gaps or breaches the Tudors and particularly the Stewarts seized the opportunity of extending their

1 About p. 2.

Resolutions as reported from Committee by Mr Littleton.

1. Resolved, that no freeman ought to be committed or detained, in Prison, or otherwise restrained, by command of the King, or the Privy Council, or any other unless some cause of the commitment, detention, or restraint be expressed, for which by law, he ought to be committed, detained, or restrained.

2. Resolved, that the writ of Habeas Corpus cannot be denied, but ought to be granted, to every man, that is committed, or detained in prison, or otherwise, restrained by command of the King, the Privy Council, or any other, he praying the same.

3. Resolved, that if a freeman be committed, or detained in prison, or otherwise restrained, by command of the King, Privy Council, or any other, no cause of such ~~com~~ commitment etc, being expressed and the same be returned upon a writ of Habeas Corpus granted for the said party, that then he ought to be delivered, or bailed.

Parl. Hist Vol 2 p. 259.

prerogative. The so called Habeas Corpus Acts had for their purpose the closing of the gap against king's aggression or personal liberty.

In 1627 the famous Darnel Case brought into prominence a question which had long been in dispute. A writ of Habeas Corpus was denied on the ground that the Kings Bench had no authority to release persons committed on the express command of the king, or the Privy Council, even if no special charge had been preferred. Although no precedent in support of this interpretation could be cited, the judges decided in the king's favor. The decision was immediately taken up in Parliament. April 3rd, 1628, the Commons by a unanimous resolution denied the right of the king, the privy Council, or any one to imprison or detain a freeman without legal warrant setting forth causes of detention, and affirmed the right of every man confined in prison even under the express command of the king, or the Privy Council, to obtain a writ of Habeas Corpus. These resolutions were followed by speeches, reports from special committees and conferences on subject of personal liberty. May 27, the well known Petition of Right was passed. After quoting the Article 39 of Magna Charta from an act of 28th Edward III, the document continues, - "Divers of your subjects have of late been imprisoned without any cause showed and when for their deliverance they were brought before your Justices, by writs of Habeas Corpus, -- and their keepers commanded to certify the causes of their detainer; no cause was certified, but that they were detained by your Majesty's special command, signed by the Lords of your Privy Council, and yet were returned back to several prisons, without being charged with any thing to which they might make answer according to the law." Therefore they humbly prayed his Majesty that "no freeman in any such manner as is before mentioned, be imprisoned or detained." After a vigorous, but ~~unsuccessful~~ protest the king signed the document June 7, 1628, thereby giving it the force of law.

In spite of ~~his~~ solemn promises to respect the right of personal liberty, Charles and his council for more than a decade continued to act in utter contempt of their promises. It is not at all strange that one of the first acts of this Long Parliament was to abolish the odious Star Chamber, the source of so many arbitrary violations of personal liberty and to provide that anyone imprisoned by order of the king or Privy Council should be privileged to demand of the judges of the Kings Bench, or of the Common Pleas

- 1 Taswell and Longmead p. 644, 647.
- 2 Parl Hist Vol 2. p. 259.
- 3 Parl Hist Vol 2 p. 260, 336, 350.
- 4 Adams and Stephens Select Documents of English History  
p. 339.

(a)

An Act entitled, "An Act for the Abolition of the  
Court of the Slave Chamber." July 5, 1641.



in open court, a writ of Habeas Corpus. Refusal, on the part of the judges to comply with the true intent of this act was made an offense punishable by a fine treble the amount of damages the aggrieved person had suffered.

So far as I can determine no farther change was made in matter of Habeas Corpus during the period of the Commonwealth; but with the restoration of the Stewarts (again to the throne) other defects in the Common Law provision and the few scattered statutory corrections soon became apparent. The unnecessary and arbitrary delays in making returns to writs of Habeas Corpus in behalf of certain state-prisoners under Lord Chancellor Clarendon, ~~led~~ the Commons after 1668 to make several fruitless attempts to secure the passage of a bill to prevent the refusal to writ of Habeas Corpus. These much needed remedies were defeated by the hostile opposition of the Lords. In 1676 the long delay in issuing a writ of Habeas Corpus to Jenks, who had been committed for a mutinous speech at Guildhall, for the moment aroused much popular indignation. The Justice at quarter session refused to issue a writ on the grounds that the prisoner had been committed by a superior court, while the Chancellor and Chief Justice in their courts declared they had no authority to issue the writ during vacation of the court. After several weeks delay Jenks was released and the political excitement which the case had aroused at once subsided. The incident however served to redouble the energies of the Commons to secure a reform. In this endeavor they were at length successful, May 26, 1679.

The Habeas Corpus act under Charles II is counted among the four great charters of English liberty. Like the Magna Charta, The Petition of Right, and the Bill of Right, it created no new privileges or immunities, but served to confirm and establish more firmly those long recognized at Common Law. Certain questions which had arisen during the struggle between the crown and the people were definitely settled. The king had endeavored in vain to make his will absolute in all departments of government. But as limitations one after another were imposed upon those who were abusing their trust, the king and his councillors sought to retain the coveted power through evasion of the laws. In no more effective manner ~~was~~ their motives revealed than

1. Adams and Stephens *Sel. Documents of English Constitutional History* H. 363.
2. Taswell and Longmead H. 649.  
Mudley H. 389.
3. 39 Charles II Cap. 2.



in their delay, or denial of justice, though the various laws statutes, and usages furnished all the general rules for the administration of justice. Many questions arose from time to time which the judges construed to the king's advantage at the expense of the subject. In so far as there were any defects to be found in the workings of Writ of Habeas Corpus, the greatest guarantee of personal liberty, just to that extent would the citizen be insecure as against arbitrary oppression. As has been said, the petition of right denied to the king and his council the ~~special~~ privilege of commitment except on legal warrant, while the statute of 1641 guaranteed the person detained even under this condition, the right to demand and obtain a writ of Habeas Corpus. Many other evasions were still practiced. The Kings Bench, the only court accustomed to issue the writ, denied the authority of its judges to issue the writ during vacation. As vacation covered the greater portion of the year, relief was not infrequently delayed many weeks, or even months. Furthermore return to the writ could not be enforced against the gaoler until the second (alias) or third (Plures) writ had been issued. This needless delay was oftentimes materially prolonged by gaolers favorable to the king transferring the prisoners from one prison to another. It was for the purpose of correcting these and similar defects that the "Act for the better Securing the Liberty of the Subject" was passed in 1679.

According to the provisions of this act, any person detained for crime, except felony, or treason plainly expressed in the warrant, or any one in his behalf, might appeal not only to the Kings Bench, or Court of Common Pleas, but also to the Court of Chancery, or Court of the Exchequer, or if in vacation to any one of the judges of the above mentioned for a writ of Habeas Corpus. In case of appeal to the court, the law furnished adequate remedy. In case of appeal to the judges, the act required judge on view of a copy of the warrant of commitment, or on oath of two witnesses that such a copy had been denied, at once to the person to issue a writ of Habeas Corpus holding the person of the prisoner in custody, commanding him within three to ten days, (depending upon distance), to bring before himself the body of the prisoner and the causes for his commitment. Within two days after the prisoner was brought before him, the judge was required to make thorough investigation, ~~to~~ release on bail or remand as the law provided in the particular case. If the judge to whom the proper demand had been made should refuse to act in accord with the intent of the statute, he must forfeit the sum of \$500 to the aggrieved person. If

gaolers should refuse to furnish a copy of the warrant of commitment within six hours after demand was made, or should transfer any prisoner into the custody of another except in obedience to legal process, or should fail to make proper return to the writ of Habeas Corpus within specified time, he must forfeit a sum of £100 to the aggrieved person. A person once released on writ of Habeas Corpus was privileged against future arrest on same offense. Although persons committed on legal warrant for felony, or treason, were denied writ of Habeas Corpus, conviction must be had no later than the end of second session of court after commitment, in failures of which the prisoner must be discharged.

The remedies afforded by this act to the defect in the Common Law provision on the subject of Habeas Corpus have proved themselves so efficient that no person charged with crime need fear any considerable arbitrary violation of his right to personal freedom. Although the statute remodelled and reconstructed the wall which separated the people in their enjoyment of personal liberty from arbitrary oppression by the government, many breaches were later discovered and closed before the wall attained its present completeness. Three very important defects were overlooked in the act of 1679. First, - No limit was placed upon the amount of bail which could be demanded. The amount could be easily be placed so high as to render bail impossible. This important defect was remedied by the Bill of Rights 1689, which declared that, "Excessive bail ought not to be required"; Second, the statute afforded remedy for commitment on criminal charges only, leaving to the Common Law, protection against illegal imprisonment in civil cases; Third there was no means of guarding against falsehood in the gaolers return to the writ of Habeas Corpus. A very strenuous but fruitless attempt was made in 1758 to afford remedy by statute to these last two defects. It was not until 1816 that a law was made by Parliament extending the provisions of the act of 1679 to imprisonment on civil suit as well as criminal charges and empowered the judge to investigate and question the truth of the return.

Since 1817, the legal guarantees to personal liberty have been rendered as complete as human institutes can be made. Absolute freedom from legal detention would be distrustive of its own end, since anarchy, the inevitable result would make civil liberty impossible. The purpose of a good government is not only to permit each person to exercise all the rights and privileges recognized as belonging to him, but to protect him in their enjoyment against those who would deprive him of them. In other words, government must have the power to punish persons who violate the rights of others. Thus



Thus personal liberty is necessarily limited, not absolute.

One of the prime purposes of law is to define what constitutes an infringement upon the rights of other persons and provide adequate punishment for the same. Since, however the interpretation and execution of the laws must from necessity be entrusted to the few, the tendency at least has ever been for these persons to go beyond the intent of the law and the power intrusted them, in order to further their own ambitious ends. The executive from the very nature of his duties which empower him to make arrest and hold persons for trial, is particularly subject to this tendency. Happily, however, one of the chief characteristics of that system of government developed by the English people is its series of checks between the different branches of the government rendering an undue preponderance of one practically impossible. It was only through long and bitter experience that the importance of this principle was learned and appreciated. A strong executive is absolutely necessary for an effective government, but as a check to the dangerous extension of this power, the judiciary has been found to be of greatest value. The Tudors and Stewarts recognizing this truth, endeavored to make the judges mere instruments of the crown. The tyranny of the former was largely due to the success of this endeavor, while the most important victory won by the people under the latter was the separation of these two essential departments of government. The authority of the courts to investigate the legality of every detention upon personal liberty and the power to confirm the detention or liberate the prisoner, restricts the power of arrest to legal ends. Thus the firm establishment of the right of the courts to issue writs of Habeas Corpus, acts as a direct limitation on the power of the executive and confines it to public purposes. In conclusion we say that each person is protected by the government against infringement upon his liberty either by unruly members of society, or by those to whom the powers of government itself is intrusted. The duty of the state to the individual is thus accomplished.

We must now consider another very important duty of the state, a duty equally important with the guarantee and protection to personal liberty, namely the protection of the state itself against those persons who would impair or destroy its authority. Without ample provisions for the latter, the former, however complete in itself, might be rendered wholly ineffective. Interference with state authority comes from without in the form of invasion and from

See. Medley H. 391-2

May. 20th 1871 H. 10-11

Decy H. 215-18.

within in the form of insurrection, or rebellion. ~~It is~~ It is generally recognized that in the presence of such dangers the executive should be impeded as little as possible; he must have the power not only <sup>to</sup> meet the enemy on the field of battle, but power also to detain particular persons whom he may reasonably suspect of encouraging or aiding the enemy. If the courts should be obliged to investigate every arrest made under these conditions and to proceed upon trial as in times of peace, <sup>a serious</sup> ~~it is not~~ fatal hindrance to the action of the executive, would often result. Hence it is that during times of imminent public danger the Habeas Corpus Act has frequently been temporarily suspended.

These Suspension Acts do not imply as the title would seem to signify, a total suspension of the privilege of Habeas Corpus, but simply ~~denies~~ persons apprehended on suspicion of treason, the privilege of demanding from the courts or Judges the writ of Habeas Corpus. In all other cases the privileges guaranteed by the Act continues in full operation. The power is not voluntarily assumed by the crown but conferred upon it by the people through their representatives in Parliament. Even thus limited these acts afforded the executive a very important power over the liberties of the people and can only be justified by the emergencies of the case when the liberties of each and all are endangered.

We have traced briefly the evolution of the privilege to the writ of Habeas Corpus from the broad general guarantee against arbitrary imprisonment under the Anglo-Saxon laws through the various steps by which the crown was limited in the attempt to evade the spirit of the laws, to its final and complete form as established in 1816 ~~under George III.~~ We have seen how this privilege has served as the most important guarantee to personal liberty, yet we have also said that in presence of great public peril it has often been found expedient to suspend its operation within its operation within a limited field for a limited time. It is my purpose in this paper to discuss the motives which have led to the Suspension of the Habeas Corpus Act, to determine the nature of its suspension and its influence upon the question of personal liberty. Since the passage of the Habeas Corpus Act in 1679 this statute has been partially suspended at nine different periods. The first five periods of suspension coincided with and as we shall see were occasioned by the five serious attempts of the Jacobites at home and abroad to reinstate the Stewart family

The sixth period occurred during the American Revolution when it was believed that many persons within the kingdom were offering aid to the rebels in the colonies. The seventh and eighth periods of suspension, 1794-5 and 1798-1801 respectively, formed a part of the repressive measures employed by the government to check the spread of French Republican ideas and principles in England. The severe industrial crisis following the close of the Napoleonic wars occasioned such severe disturbance among certain laboring classes that the Tories again for the last time in English History resorted to the extreme measure of suspending the Habeas Corpus from March 1816 to February 1818.

### Chapter II

Realizing that the Habeas Corpus Act served as an impossible barrier to that system of absolute government which he was sacrificing so much to establish, James II labored hard, but in vain to secure 'the repeal.' Although the statute had been passed by the Whigs when that party was in momentary ascendancy, even the Tories, subservient to the king's will in nearly every other matter, positively refused to yield him this much coveted power - a power which would have given him a dangerous control over the personal liberty of his subjects and have enabled him to enforce obedience to his ideas of government.

Although James was ~~unable~~ unable to secure a repeal of the Habeas Corpus Act for his own advantage while king, it ~~is~~ <sup>was</sup> the irony of fate that the first suspension authorized by Parliament placed in the hands of his ~~successful~~ <sup>rebellious</sup> rivals a power intended to prevent him from regaining his lost throne. That which he had so vainly desired while in authority, served as a means to render his fall complete. An account of the causes leading to ~~and~~ the details of an event so well known in English History as the Revolution of 1688 would be out of place in a paper ~~of~~ the nature and scope of the present. It is sufficient for our purposes to remember that James, finding himself helpless in the midst of his defeated troop and alienated subjects, resolved upon flight and accordingly embarked for France December 23<sup>rd</sup>, that at the solicitation of Ninety peers in London, William of Orange summoned to meet at Westminster all persons who had served in Parliament under Charles II,<sup>2</sup> that this body placed in the Prince's hand the administration of public affairs

<sup>1</sup> Macaulay Vol 2 H. 3.

<sup>2</sup> Parl Hist. Vol 5 H. 23.



civil and military" that a convention of the people convening January 22, 1689, in one of the most remarkable resolutions in English History declared the throne vacant and bestowed the crown upon William and Mary conjointly.<sup>2</sup> It is to be noted that on February 12, before the crown was offered William and Mary, both houses in a joint resolution to ~~this resolution~~ <sup>their joint resolution</sup> presented a Declaration of Rights, setting forth in a clear forcible manner the abuses and misgovernment under James and reasserting old and long acknowledged rights.<sup>3</sup> It is important for our purpose to note also that among the declaration of personal rights they declared that "Excessive bail ought not to be required nor excessive fines be imposed, nor cruel and unusual punishments inflicted. I have already mentioned the bearing that these declarations embodied in the famous "Bill of Rights", had on the subject of Habeas Corpus, and through the Habeas Corpus on broader subject of personal liberty."

Even after the crown had at length been entrusted to William and Mary, the problems which had confronted the nation since James II flight were by no means satisfactorily solved. Immediate recovery after so violent a shock was impossible. There was a national <sup>feeling</sup> of instability. James had been received with every mark of consideration at the French Court and it seemed quite probable that his entreaties for help in the work of regaining his lost crown would not be in vain. England, preferring a catholic to a protestant ~~king~~ <sup>rule</sup>, was in open revolt, while Scotland was on the point of taking up arms in behalf of the national king. England herself, was not unanimous in her support of William and Mary. Though a large majority of the people, through their representatives in convention had conferred upon them their authority, many persons questioned the strict legality of the act and believed that James had been grossly deprived of his crown. Others for motives of religion, or self interest ~~if~~ preferred the Stewart to the Prince of Orange. Though certainly much magnified, it is impossible to estimate the exact extent of danger to which these various sources of opposition ~~should have been~~ <sup>were</sup> given credit. There was a popular feeling too, that the Catholics as a body would prove unfaithful and were only waiting an opportunity to restore the Stewarts. Later investigations has proved that this fear was wholly unwarranted. Nevertheless it certainly exercised great influence over the popular mind in this period of uncertainty. Rumors of plot were afloat, and in this state of affairs William believed that exceptional means must be used to prevent farther spread of defection among the people.

Since James's flight on December 23, many persons who had had important influence in his misgovernment and those who even believed to be laying a plot for his restoration

- 1 Parl Hist Vol 5 H. 24
- 2 Parl Hist Vol 5 H. 50 & 105.
- 3 Parl Hist Vol 5 H. 108

4 above H. 8

had been seized and retained in prison.<sup>1</sup> During the ~~vacancy~~<sup>absence</sup> of the ~~throne~~<sup>interregnum</sup> these persons could by no legal means secure their release since the operation of Habeas Corpus and trial proceedings had ceased. The ordinary courts however, would soon resume their work and many persons who had been detained on mere suspicion would obtain their release ~~on~~<sup>by</sup> writ of Habeas Corpus. Instead of exposing the country ~~at~~<sup>to</sup> this critical moment, to dangerous plots and sedition made possible by the liberty of these persons, William believed it would be wiser policy to detain them in prison without trial until the peril which then threatened the nation should be passed. Such a step could not be legally taken, however, without consent of Parliament, for as we have already seen the Habeas Corpus Act<sup>2</sup> of October 1679, required the courts to issue writs of Habeas Corpus on demand by persons detained and to liberate, bail, or remand the prisoner as the law provided in the particular case.<sup>3</sup> Now the courts, ~~if~~<sup>even</sup> if they should wish, could not legally remand a person to prison on mere suspicion. Yet to release him on bail, would be to defeat the very object for which he had been arrested.

On March 1, 1689, seventeen days after being crowned king, William, addressing the House through his privy councillor, Hampden, stated that he had creditable information that private meetings and cabals were being held in and about London for the purpose of aiding James.<sup>3</sup> Accordingly he had ordered the arrest of several persons on suspicion of High Treason and felt sure that other persons ought to be arrested on a similar charge. "His majesty", said Hampden "is between two great difficulties in this case; if he sets these persons at liberty, that are apprehended he would be wanting in his own safety and the safety of his government and people. On the other hand, if he should detain them, he is unwilling to do anything but what shall be fully warranted by law, which he has so often declared he would preserve."<sup>4</sup> The situation was indeed hard; the king had ordered the arrest of certain persons, believing their liberty to be a menace to his own safety and the safety of the government. Yet through the lack of sufficient evidence, resulting from the unsettled state of affairs these offenders would be released on writ of Habeas Corpus as soon as the administration of justice could be resumed. The king frankly expressed his unwillingness to charge excessive bail, remembering that had been one of the grievances recently presented to him. Ordinary bail, however would be

1 Macaulay Vol. 3 pp. 37-8.

2 Above p. 7.

3 Parl Hist Vol 5 p. 153.

4 Parl Hist Vol 5 p. 153.

- a. Sir Thos Littleton and Col. Birch.
- b. Boscawen. Mutinies at Ipswich and Harwich  
Boscawen's suggestion was embodied in the Mutiny Act.



wholly ineffective, since persons promoting such great enterprises, as the above, would scarcely hesitate to forfeit a small sum of money in their hopes of large future returns. The advice of the House was humbly asked.

The message was immediately debated. Though every member, it would seem fully appreciated the danger to which the king and the government were exposed, they differed widely in their opinions concerning the best remedy. Certain ones, urging more <sup>unanimous</sup> consideration of the matter, proposed that the king be requested not to proceed immediately against the persons detained, and suggested that a vote of thanks be sent him for asking the advice of the Commons, <sup>a</sup> "A thing observed" Littleton, "not very usual in this place". Attention was called to serious disturbances among a certain class of discontented soldiers and the possibility that they might in the near future join the enemy in Scotland. To anticipate such an event Boscowen pressed for most stringent discipline among the troops. In addition he proposed that an application be laid before the king advising him to ~~order~~ the arrest of such persons as he should suspect of being obnoxious, and urged Parliament to pass an act enabling the king to commit without benefit of Habeas Corpus such persons as he should have cause to suspect of treasonable designs. So far as I can learn Boscowen's was the first suggestion in Parliament that the Habeas Corpus be suspended even for a limited time.

It is not at all strange that the above proposition encountered a very considerable opposition. Only after a long struggle had the Commons secured the passage of the Habeas Corpus Act. During the misgovernment of the preceding reign they had come to regard this measure as the strongest safe-guard against attempted violations of personal liberty. Now for Parliament itself to sacrifice even for a limited time any provision of the law, would establish, many believed, a dangerous precedent which might in the future lead to an utter disregard of this precious right. They felt that they were on the point of repudiating fundamental principles announced two weeks earlier in the Declaration of Rights. In view of their past experiences, however, the Commons' fears were not ~~without~~ <sup>rather</sup> without reason. Many curious evasions were proposed than re-trench upon the Habeas Corpus Act. Sir Thomas Clarges urged that excessive bail be imposed. Sir Richard Temple, however, showed that such a policy would be as much a violation of personal liberty as a total denial of bail. In turn he suggested that until a special law be passed, the king be advised to refuse ~~all~~ proceedings to deliver persons held on suspicion

1 *Parl Hist* Vol 5 H. 154

2 *Macaulay* Vol 3 H. 31-34.

3 *Abm* H. 12.

4 *Parl Hist* Vol 5 - H. 155

of treason, and to continue ordering such arrests as he <sup>should</sup> still deemed expedient. The suggestion was immediately dropped. Recourse must <sup>be</sup> had to legislative power to render effective the proposed course. Hampden then moved for a temporary suspension of Habeas Corpus. The motion carrying, a bill was immediately drafted, read the first and second times + committed all in the same day.

On March 4, the bill was again taken up for consideration. ~~Aside~~ from incidental charges of undue haste and irregularity in passage, practically the only opposition met on this date was on the question of privilege of Parliament. The thought that members might be arrested on mere suspicion and before they had been adjudged criminal by the house aroused very unpleasant recollections. The attempted arrest of the five members Fifty years earlier was still an unhealed sore. As a result an amendment was passed providing, "The act shall not any way effect the privilege of Parliament, or persons of the members, till the matter of suspicion be first communicated to the house". A second amendment to the effect that the act should never be drawn into precedent or example was lost. After limiting the operation to April 17, the bill was passed by the Commons March 4, and sent to the Lords who immediately gave their consent. Unfortunately neither the text of the statute, or a record of the votes are accessible. The Statutes at Large gives us only the title, which reads, "An act for empowering his Majesty to apprehend and detain such persons as he shall find just cause to suspect are conspiring against the government." Since, however, this statute was made the precedent and model for subsequent suspensions, we may feel tolerably certain the provisions of the former did not differ materially from the latter. We shall have occasion later to examine carefully one of these subsequent acts.

One element which figures so prominently in nearly all the latter debates on Suspension of Habeas Corpus is scarcely noticeable on this occasion. With the single exception concerning the privilege of Parliament, it appears that hardly a member entertained a fear that the king and his ministers ~~in this particular instance~~ would use the extraordinary power permitted by the Suspension Act for the purpose of advancing their own ambitious designs, private or political, at the expense of the people's liberty. This

1 Parl Hist Vol 5 p. 154.

2 Parl Hist Vol 5 p. 159

3 1 Hall and Marry Caf 2.



fortunate lack of distrust may be explained, I think, by the facts that nearly every one believed that the king and the government were actually in danger, and that there ~~was~~ as yet no ~~action~~ party of opposition in Parliament. The Commons, February 27, and the Lords the day following had voted nem. con., a Declaration of Lives and Fortunes in Williams' behalf. In the common anxiety during December and January, the Whigs and the Tories, laying aside their mutual jealousies and dislikes, had united to place William and Mary on the throne. Hoping to cement and complete this momentary union the king without discrimination as to ~~either~~ party had chosen for his councillors the leaders of both. This policy, destined to early failure, did for the moment discourage political opposition to those in authority. Later when the administration was wholly in the hand of one party, we shall see that the question of Suspension of Habeas Corpus was supported, or opposed very largely on grounds of political consideration. The party in opposition almost invariably hesitated to give their political enemies so great a power over the liberties of the people as Suspension of the Habeas Corpus necessarily permits. It is interesting to note, therefore that on the present occasion there was in Parliament no party opposition to the measure.

The first Suspension of the Habeas Corpus, as has already been said was for a period of only six weeks, (March 5, to April 17). Just how effective this act proved it is impossible now to determine. It certainly permitted the king to detain those persons previously arrested on suspicion of treason and enabled him to apprehend others of similar character. The fact alone that he had the power tended to discourage the evil for which the act was made a remedy. We may feel quite certain, too, that no innocent person suffered any considerable hardship by reason of this act. Its duration was so short. Nevertheless the impression which the statute created in the popular mind was not wholly desirable. As is so often the case, the king found himself the object of all the odium arising from the "Suspension Act." Ronquillo, a contemporary, wrote that all the malecontents outside of Parliament seized occasions to complain that William the deliverer, had before he was on the throne, a month deprived the people of a previous right which James the tyrant had respected. We can easily understand the influence this radical charge had on the people. It was, however rank injustice to William. James had in vain labored to secure the repeal of the act of 1679, and failing in this had violated its spirit by

1 Parl Hist Vol 5 p 150.

2 Macaulay Vol 3 p 38

imposing excessive bail. On the other hand, the present statute of suspension was an act, not of the king but of the people themselves, through their representatives in Parliament.

Scarcely had the act expired, when on April 24, the Lords sent the Commons a message to the effect that several treasonable letters written by the Duke Hamilton of Scotland had been fortunately intercepted and were now in their possession. Evidently these letters created a powerful impression in Parliament. The Houses immediately passed a bill empowering his Majesty to apprehend and detain without benefit of Habeas Corpus all suspected persons. Unhappily the debate and the provisions of this second act, so far as I can determine, are nowhere recorded. From the Parliamentary History we merely learn that such a statute was passed. While the Statutes at Large record only the title.<sup>2</sup> In the excitement of the moment the bill was no doubt hurried through both houses with little, or no opposition, serving as a brief extension of the first Suspension Act. The time for which the second was made effective could not have been longer than four weeks, for a third act was introduced May 22. In the course of the debate on the latter, Hampden and Sir Robert Howard said that the Lords, not the Commons had cut down the time of the second act. In commenting on the action of the upper house, Howard said that he wondered in the last act that Lords could reduce the time so short as to make the act useless, but he apprehended it was the modesty of the style the Lords used.<sup>3</sup> Before taking up for discussion the third, and by far the most important, *Act of Suspension* in this period, ~~of suspension of the Habeas Corpus~~ it would be well to take a brief survey of the political circumstances which led Parliament to take this extraordinary course.

After a long period of apparent indifference to European politics, England had been induced by her new ruler to enter into a Protestant Alliance with Holland against the ~~aggression~~ <sup>aggression</sup> of Louis XIV. In consequence of the French atrocities in the Palatinate a formal declaration of war against France was issued March 7, 1689. England could not but appreciate the gravity of the situation, for at no other time in history had France been better prepared to prosecute, either defensive, or offensive war.<sup>4</sup> The Irish Revolt added materially to England's discomfiture, under the leadership of Tyrconnell the rebels were vigorously contesting William's title "King of Ireland". James with French money

1. *Parl Hist.* Vol 5 p. 154-5.
2. *Hill and May* Cap. 7.
3. *Parl Hist.* Vol 5 p. 266.
4. *Parl Hist.* Vol 5 p. 271.
5. *Macaulay* Vol 3 p. 96-101

and French troop had hastened to their assistance. The prospect of combined invasion of England by French and Irish troop under James seemed quite favorable. At Kill-icrankee, the Scotch Highlanders were holding the English troops ~~in~~ utter defiance. If Scotland, Ireland and France could be induced to make "preconcerted attack upon William he could not (~~hope~~) but fall. At this moment when perfect harmony was most needed, many elements of internal discords arose to make more difficult the king's arduous task. Serious mutiny had appeared among certain of the English troops, jealous of the Dutch soldiers and discontented with their share in the Revolution.' Bitter resentment, if not open defiance among the great mass of the Clergy, had resulted from the liberal church policy of the new government." Old time loyalty was arousing in the mind of many a Tory a source of deep remorse for the part he had played in the misfortune, ~~the~~ disgrace of the Stewarts. The early enthusiasm of the Whigs who had hoped in vain to find in William, a party leader, was rapidly cooling. While it is nevertheless true that a large majority of the people would have unhesitatingly risked their lives and fortunes in William's defense rather than risk the perils of another revolution, ~~it was~~ impossible that among so many sources of discontent, no considerable number of the enthusiasts and fanatics stood ready to profit by unsettled state of affairs and to jeopardize the welfare of the king and the people for private, or political reasons. Parliament ~~awoke~~ to a sudden realization that a well laid conspiracy operated in connection with James from abroad might at any moment precipitate in revolution, the result of which no one would dare to predict. It was with fear in mind, that Hampden asked leave to bring in a bill for suspending the Habeas Corpus May 22. 1689.

John Hampden, the leader of the radical Whigs was probably the staunchest advocate in Parliament of the personal rights.<sup>3</sup> Strange as it may appear at first glance it was he who introduced and carried to the final passage the first, probably the second, and certainly the third act for suspension of the Habeas Corpus. With clear judgement, he saw that during periods of great peril to the state, to yield for the moment a fragment of the constitution for the ultimate preservation of the whole, was much wiser than to cling to the fragment at the risk of losing all. Report from the country of ~~dis~~affection to the government, lack of harmony in Parliament, mutiny in the army

1 Macaulay Vol 3 pp. 30-36

2 Macaulay Vol 3 pp. 55-90

3. Dict. of Nat. Biog. article John Hampden.



rumors of plot and intrigue everywhere, all coming as they did/ when England was on the verge of war with France and a wide spread rebellion in Ireland- aroused him to a sense of darkest apprehensions. "What I<sup>1</sup> move", he exclaimed "is for the king and the nation." The house would soon adjourn and what would the king do if this bill be not passed. Dangerous persons would be delivered out of prison, to act, perhaps, to the subversion of the government. If the people conspire, the king could not keep them in prison for lack of evidence, since they must be released on writ of Habeas Corpus.

Hampden shared this feeling with his party. Of the twenty-two persons reported to have taken part in the debate on the Habeas Corpus, May 22-24-25, twelve urged its suspension and ten opposed it. The former without exception, I find, were Whigs, the latter Tories. These facts are significant as showing a change in the ~~relation~~ relation between the two parties since March. As we have already seen, practically the only opposition to the first act of suspension was on the question of the privilege of Parliament. On this point there had been no party division, as both parties had unanimously supported an amendment providing for that privilege. It was the Tories who had changed their position. The reason for this change is not difficult to find. Though the Tories had been liberally remembered in the appointments to offices in the government, the Whig held a decided majority in the Privy Council. Little was made of this fact so long as harmony existed between the two parties. In April and May, however, they had unhappily split on the bill for Indemnity for offenses committed before the Revolution. As many of the leading Tories had figured prominently in the misgovernment under James, that party offered its party support to this bill. The Whigs on the contrary believing that an example should be made of certain offenders, refused to support unless a long list of exceptions ~~be~~ made.<sup>2</sup> This action on the part of the Whigs was received by the Tories as a direct blow to themselves. In returning to the bill under consideration, it should be borne in mind that a Suspension of the Habeas Corpus authorizes the Privy Council, as well/ as the king, to make arrests on suspicion. Since the Whigs practically controlled the Council, the Tories very naturally hesitated to place in the hands of their political enemies such an extensive power over their liberties as the bill proposed. The former had just refused their

1 Paul Hist- Vol 5 H. 266-7.

2 Macaulay Vol 3 H. 310 sq.



assent to the Tory measure for Indemnity; the latter retaliated by determined opposition to the proposed Suspension Act.

The debate was not remarkable for clear, or convincing arguments on either side. Both parties had evidently taken a predetermined position ~~on~~ the question and were resolved not to be influenced by the appeals, or threats of the other. The Whigs insisted that the present unsettled condition of the state and, as they declared, the existence of a Papist plot, necessitated the proposed measure. "The bill was obtained with great difficulty," said Henry Capel, "to stop the hands of persons from violence, but in such a conjunction as we are now in, to be tied up not to do for the common safety, that people cannot be preserved by the Government, that will loose the people's heart."<sup>2</sup> No dangerous precedent could be established by suspending the statute by action of Parliament, so long at least as that body was freely elected.

Having changed their entire front in the past few weeks, the Tories not ~~only~~ <sup>must</sup> denied the necessity of suspending the Habeas Corpus, but declared that such a course would be productive of most dangerous results. In reply to the assertion that "Suspension was necessary as long as the government <sup>was</sup> ~~was~~," Sir Robert Colton warned the House that Louis XIV of France desired only liberty to raise money till next sitting of Parlement. But he never called Parlement and they have raised money without Parlement ever since.<sup>3</sup> Others believed that the Act of 1679 itself was defective. "The Habeas Corpus", said Sir Francis Russel, "was already the law before the passage of the statute bearing that name. When we have better judges, that law will have its course." It seemed to him that there was a defect in the government, if a law must be suspended when not needed. To insure the better operation of the Habeas Corpus, he would prefer that the Act of 1679 be taken away altogether, rather than prolong its suspension."<sup>4</sup> This proposition was immediately denounced by Boscowen, who believed that the repeal of the act would permit the king to suspend <sup>the Habeas Corpus as well</sup> ~~by the execution~~, "he said, "it is always dangerous: by the legislature never."<sup>5</sup>

At length Sawyer, Tredenham and Cotton, acknowledging the real motive for the Tory opposition, attacked the bill on the ground that it permitted the Privy Council to commit on bare suspicion. Persons might be imprisoned without ever knowing why they were suspected. Under guise of suspicion, the Council might make arrests wholly by reason of private or political resentment. Tredenham, however, would warn the Privy Council of the fate of the Ecclesiastical

1. Parl. Hist. Vol 5 p. 270.

2. Parl. Hist. Vol 5 p. 268.

3. Parl. Hist. Vol 5 p. 269.

4. Parl. Hist. Vol 5 p. 267.

5. Parl. Hist. Vol 5 p. 267.

Commission, "I have great respect for those who are to have this power," he said; "but such extraordinary authority has always been found fatal to those who have executed it. There is a trust implied in these grants and they are answerable to the legislative power for their action." Sir William Williams, who had again returned to the side of the ardent Whigs, supported the bill, he said, on the very grounds that the Tories opposed it. He argued with Tre-dentam that the Privy Councillors must hold the execution of the proposed act as trustees of the kingdom. They might commit on the least suspicion of treason, it was true, but if they should have no reason for what they should do, if the cause were not just, he would tell them to their face that they must answer for it to the laws and Parliament. For that reason he believed that the dangers resulting from the act were not so great as the Tories had assumed. This view of the question seems to have had considerable influence. The Tories were lead to believe that the Privy Councillors would be held responsible to Parliament for any abuse of the power granted by the present measure. And more important still, they saw that the Whigs were determined upon the passage of the bill, and the big majority of the latter rendered farther opposition useless. On May 25, the House passed the bill by a final vote of 126 to 83.<sup>1</sup> By its own provision, the act was made to expire November 1, 1689, covering the recess of Parliament. This proved to be the last act in the first period of suspension. Although a serious attempt was made the following Spring to renew the suspension, seven years happily elapsed before Parliament felt the necessity of again jeopardizing the liberty of the subject to protect the state.

We are now in a position to review briefly the first period of suspension. During the progress of the Revolution many persons had been apprehended and detained in prison on suspicion of treason. While the courts of justice were closed these persons had been unable to secure their release on writ of Habeas Corpus. Anticipating the near opening of the courts, however, the king in March had asked Parliament to adopt measures whereby these suspected persons might be legally retained in prison. We have seen how both Houses, regardless of party lines, had responded to this appeal by suspending the Habeas Corpus six weeks. Scarcely

1 *Parl Hist Vol 5 H. 276.*

2 *Parl Hist Vol 5 H. 276.*

3 *1 Hull and Mary Cap 19.*

4. *Parl Hist Vol 5 H. 604-612. April 24. 1690*

had these six weeks expired when the interception of certain of a ~~reasonable~~ letters, lead Parliament in haste to renew the suspension act for perhaps four weeks longer. In spite of increasing dangers of invasion and plots for the Stewart restoration, by the latter part of May confidence in the new government had been greatly increased. The old political parties had ~~been~~ <sup>returned</sup> once more to split on questions of state. The more conservative Tories now took the position that the dangers which had threatened the king's person and his government were no longer ~~imminent~~ <sup>as to justify</sup> a prolonged infringement upon the guarantees of personal liberty. In spite of the Tory opposition, however, the Whigs had forced the passage of the third bill by continuing the suspension of the Habeas Corpus for One hundred fifty-nine days longer. The reasons for suspension in each of the three cases were practically identical. Threatened ~~the~~ invasion from France, ~~and~~ Ireland and Scotland in revolt, and wide spread dissatisfaction affecting numerous classes of people rendered the activity of certain persons of questionable motives dangerous both to the king and his government. Yet lack of positive evidence in many cases made prosecution useless. <sup>It was</sup> for the purpose ~~of~~ retaining ~~legally~~ <sup>legally</sup> these persons, <sup>that</sup> the first three acts of suspension were passed.

In connection with the first period of Suspension, I must take up for a brief consideration, a question which I shall attempt to discuss more in detail at the close of this paper. Prof. A.V. Dicey in his admirable book entitled, "The Law of the Constitution," takes the position that an act of indemnity is the natural and in most cases the necessary sequence to an Act of Suspension, that without assurance of the former, the latter must prove ineffective. The reasons he advances in support of this view I shall speak of later. It is important, however, to note his assertion that, "An Act Suspending the Habeas Corpus Act, which has been continued for any length of time has constantly been followed by an Act of Indemnity." This statement as we shall see is not true for all periods of Suspension. In 1689 although the Habeas Corpus Act was suspended for more than seven and a half months, no Act of Indemnity was passed.

It is true that the king as early as March 25, 1689 had urged upon Parliament, the wisdom of such a measure to quiet the discontent within the country. The proposed bill was made the subject of a bitter and prolonged discussion during the latter part of the session and far into the ~~next~~ <sup>following</sup> year, but was never passed. The purpose of this bill, however, was something wholly different from that suggested by Dicey. It was intended to ~~seem~~ <sup>act</sup> as a pardon to those

1 Dicey p. 220.

2 Parl Hist Vol 5 p. 198.

3 Parl Hist Vol 5 p. 198 - 7: 255-63; 278; 284-9; 296-302  
313-320; 271-79; 327-32.



A. Statute 2 Will and Mary Cap 10. Parl Hist (Vol 5 p 647) speaks of this as an act of Indemnity. But Macaulay points out the difference between an act of Indemnity and a Reclamation of Grace (Vol 3 p 458).

"An act of Indemnity passes through all the stages through which other laws pass and may during the its progress be amended by either house. An Act of Grace is received with peculiar marks of respect, is read only once by the Lords and once by the Commons and must be either rejected altogether or accepted as it stands."

The change in the political complexion of Parliament since the prorogation in March made the present measure possible. Macaulay says "Both Houses stood up uncovered while the Act of Grace was read and gave their sanction to it without one dissentient voice."

35 only were expressly exempted, and of these few or none were made example to the justice of the nation.

Parl Hist Vol 5 pp 647.

The Act of Grace followed seven months after the Suspension Act had expired and nowhere in the discussion of the measure can I find any suggestion that it was intended to serve as an indemnity to the ministers who had acted under the authority of the Suspension Act.

(2) In a political pamphlet entitled "A Vindication of the Proceedings of the late Parliament of England Anno Domini 1688<sup>89</sup>, during the First year of the Reign of their present Majesty, King William and



Tories who had participated in the misgovernment under James and many of whom had at first opposed William's authority. It is even interesting to note, that a resolution was passed by the House providing that the, "Requiring of excessive bail, imposing excessive fines, giving excessive damages and using undue means in levying such fines and damages, and inflicting cruel and unusual punishment," were crimes for which no indemnity should be allowed.<sup>1</sup> To quiet the fears of the Tories and to settle the violent dispute occasioned by the proposed measure, the king in the following Spring issued a proclamation of Grace.<sup>2</sup> The above was the only bill for indemnity introduced at this time. Not only did it fail to become a law, but its purpose as we have seen was wholly alien to Suspension of the Habeas Corpus Act.

As has been said, an ineffective attempt was made in the Spring of 1690 to ~~suspend again~~ suspend the Habeas Corpus Act.<sup>3</sup> Since the rupture of the two parties on the question of indemnity, the Whigs had grown more and more violent in their attacks on certain Tories. Practically the entire second session of Parliament was wasted in impeachment and investigation of members. January 27, William in disgust dissolved Parliament and ordered a new election.<sup>4</sup> In the new House, which met March 20/<sup>1690</sup> the Tories had a respectable majority.<sup>5</sup> The Whig minority, hoping to place the Tories in a bad light at once introduced a bill of Abjuration.<sup>6</sup> According to proposed measures justices of the peace were empowered to require anyone within the kingdom to take an oath abjuring James and on refusal to order their arrest. Many of the Tories, while supporting William were unwilling to humiliate themselves by abjuring James. The king solved the delicate problem of the Tories by letting it be understood in Parliament that he wished ~~that no~~ <sup>discontinue of only</sup> new test be imposed on his subjects.<sup>7</sup> The Whigs then turned to a Suspension Act. But the real motive having ~~been~~ <sup>already</sup> exposed, the motion was immediately voted down.

- 1 Parl Hist Vol 3. p. 278. 9 exceptions.
- 2 Parl Hist Vol 3. p. 539-40.
- 3 Parl Hist Vol 3. p. 541-47.
- 4 Parl Hist Vol 3. p. 594. (Ref. 24)
- 5 Macaulay Vol 3. p. 453
- 6 Parl Hist Vol 3. p. 603-5 (footnote)

and Queen Mary" which appeared during March 1690 John Somers suggested that much was being made out of the fact of Suspension of the Habeas Corpus Act. One pamphlet spoke of the Suspension as "the suspending, stopping, or staying of the Habeas Corpus Act." "This," says Somers, "put him in a great fit against Parliament as having by the suspension wronged the liberty of the subject; yet if before we give out our last judgment upon this matter, we consider as we should do, all things impartially, not suffering ourselves to be biased by a wrong apprehension of things, we shall surely discover that the suspending of the act, at that time, was the only way of securing our property and liberty, by preventing a civil and domestic war which ~~was~~ in all likelihood had ensued, had it not been prevented in time by empowering the king to secure such as became of this quality, or their former engagements with the malcontents were liable to form ring leaders in the new disturbance, in a time when things were as yet not settled upon so sure a foundation as they now are.

Parl Hist Vol 5 p. 18-34.

Though many dangers continued to imperil the safety of the kingdom after Nov. 1, 1689, the Habeas Corpus Act was held intact for nearly seven years. Within two years William had crushed all opposition to his authority in Scotland and Ireland. In his struggle on the continent, however, he met with uniform failure till by the capture of Namur in 1695 he broke the spell enjoyed by the French arms for more than fifty years.<sup>3</sup> In the meantime the king felt himself obliged to rely very largely on his Dutch Servants. His distrust in the former and confidence in the latter, cost him much needed popularity. Large grants of land <sup>made</sup> to foreign favorites ~~was~~ not intended to ameliorate this feeling. The vast expenditures <sup>of money</sup> necessary to carry on the campaigns on the continent, had alienated to a very considerable degree the industrial classes.<sup>4</sup> Since their defeat in the naval battle of La Hogue, 1692, the Jacobites had given William little trouble. But Mary's death in Dec. 1694 marks a renewal of intrigues and plots to restore the Stuarts.<sup>5</sup> It was not however until the king's return from the continent in the following October that the Jacobites, hoping to profit by William's increased unpopularity of the moment ventured to strike the blow.<sup>6</sup>

A double plot was carefully laid. Having won Louis XIV's promise of aid, James commissioned the Duke Berwick to go to London for the purpose of communicating with the Jacobite nobility and gentry, and to fix with them a date ~~for~~ a general uprising. French vessels and French troops would be ready to come to their assistance at the first news of an insurrection. To one, Sir George Barclay, a Scotchman was assigned a more dangerous, more despicable role, which was no less than the assassination of the King of England. Well supplied with gold, Barclay reached London in January 1696 and in a few days had ~~fourteen~~ hired as assistants to his perilous undertaking some thirty men of most desperate character. After many schemes had been suggested, they resolved to strike the fatal blow, <sup>on</sup> Saturday, Feb. 15, as the king was going with a small body of retainers through a narrow pass between Turnham Green and Brentford. The night before the royal tragedy was to have been perpetuated, William was warned through Lord Portland by a reliable Catholic priest, Pendergrass, not to venture abroad on his customary Saturday hunt. Though placing little reliance in the warning, he remained at Kensington and the plot had to be postponed to Feb. 22. In the meantime Berwick had called several secret meetings of the Jacobites. Still they hesitated to take up arms before the French troops

1. Bright p. 834-6
2. Macaulay Vol 4 p. 289-90
3. Macaulay Vol 4 p. 1-46
4. Bright p. 432-28
5. Green p. 699.

6. Macaulay Vol 5 p. 83-110
- Paul Blisset Vol 5 p. 987-90
- (for details)

(2)

My Lords and gentlemen, I am come hither this day upon an extraordinary occasion, which might have proved fatal, if it had not been disappointed by the singular mercy and goodness of God, and may now --- be so improved as to become a sufficient warning to us, to provide for our safety against the pernicious practices and attempts of our enemies. --- I have received several concerning information, of a design to assassinate me, and that our enemies are very forward in their preparation for a sudden invasion of the Kingdom. And I have therefore thought it necessary to lose no time in acquainting my Parliament with these things, in which the safety of the Kingdom and the public welfare are so nearly concerned."

Parl Hist Vol 5: pt 987-8.



should land. Louis in his turn refused to risk 12 or 15,000 soldiers in England before he had positive assurance that an insurrection was a fact. James, however stood at the head of 20,000 troop at Calais ready to embark in the French fleet at the first news of Williams death.

By midnight of the 21st, William had learned through various credible sources the details of the whole conspiracy. Pendergrass and De la Rue had been prevailed upon to give the names of the principal conspirators. Instead of going forth on Saturday 22, the king issued a proclamation for the apprehension of the 29 conspirators. By noon 20 had been placed under arrest. The Council had been hurriedly called in the early morning, messengers had been dispatched to Flanders bearing orders for the immediate return of the English regiment, while Russel had hastened to assume in person the command of the fleet. Having summoned the Commons to appear in the House of the Peers, William on the 24th, acquainted that body with the timely discovery of a plot for the assassination and an immediate invasion of the country.<sup>a</sup> He had already given such orders to the army and navy as would be sufficient to defeat the attempt of the enemy. Although many of the conspirators were under arrest and the warrants were issued for the apprehension of the rest, he trusted that the present occasion would be so improved as to provide greater security in the future against pernicious practices and attempts of the enemy. "Having now acquainted you with the danger which hath threatened us", he concluded, "I cannot doubt of your readiness and zeal to do everything which you shall judge proper for our common safety: and I persuade myself we must all be ~~all~~ sensible how necessary it is in our present circumstances that all possible dispatch should be given to the business before you."

In the evening, both Houses waited upon the king at Kensington. In a joint address they congratulated him, *on his happy preservation and escape, & that* to take more than ordinary care for his person in the future, since the safety and welfare of the nation depended much upon his life. "We make it our desire," they concluded, "for your majesty to seize and secure all persons, horses and arms, that your majesty may think fit to apprehend upon this occasion."<sup>2</sup>

In the last sentence, we find the substance of a Suspension of the Habeas Corpus. During the day the House had given leave for the introduction of two very important bills;<sup>3</sup> one providing that in case of the King's death, the existing Parliament should continue until dissolved by the next heir succeeding in accordance with the Act of Settlement;<sup>4</sup> the other authorizing the king, "to secure and detain such persons, as his majesty should suspect of conspiring against his person and government"<sup>5</sup> in other words a Suspension of Habeas Corpus. The bill last mentioned introduced by Poltney was read the first and second times on 25th and 26th respectively.<sup>6</sup> On 27th the House empowered the Committee of the whole, "to receive

1. Parl Hist Vol 3 p. 987-8,  
2. Parl Hist Vol 3 p. 988-90,  
3. " " " 5 " 990-1

4. 7 Will III Cap 11,  
5. 7 Will III Cap 15

6. Journal of House of Commons Vol 21 p. 487

a. Preamble of Act.

Whereas there has been a most horrid, heinous, and detestable conspiracy, formed and carried on by papists and other wicked and traitorous persons for assassinating his Majesty's Royal Person in order to the encouraging an intended invasion from France to the utter ruin and subversion of the Protestant religion, and the laws and liberties of his kingdom, &c.

a clause to secure horses and arms, as well as persons." The proposed amendment as accepted by the House on the 29th authorized the "Lieutenant of all the counties of the kingdom, or their deputies, or agents until the first of September 1696," to seize the horses of such persons as they shall judge to be dangerous to the peace of the kingdom." March 2 the bill was read the 3rd time passed and sent to the Upper House for concurrence. The day following, the Lords took up the bill for the first reading. Read the second time on the 5th and third time on 7th, the House bill was passed without amendment. Later on the same day the king in presence of both houses signed the bill suspending the Habeas Corpus probably till Sept. 1, 1696.<sup>a 7.</sup>

If the bill met any opposition, it is no where recorded. The King's narrow escape from a violent death and the revelation of a carefully laid plan for a Jacobite invasion to follow the assassination aroused most intense feeling in Parliament. Instructions were given for a more effectually raising the militia.<sup>8</sup> In an humble address, the king was asked to issue his Royal Proclamation to banish all Papists from the cities of London and Westminster to a distance of ten miles and to instruct the Judges of the Court to place in execution all laws against the Papist and Nonjurors.<sup>9</sup> A solemn Association signed by all but 92 Commons and 15 Peers recognized William as the rightful and lawful king and bound the signers to stand by him against James and his heirs.<sup>10</sup> From the houses of Parliament, the Association was carried to all parts of the kingdom and "was signed," says Cobbett, "by all sorts of people, very few only excepted." In a Bill for the security of his Majesty's person introduced April 2nd and signed by the king, April 27th no person was permitted to hold any office of profit, or trust, civil or military, who had not signed the Association. Any person who should by writing, or otherwise declare that William was not the rightful and lawful king of the realm, or that the late king James, or the pretended Prince of Wales, or any other person, not provided for by the Act of Settlement, had a right to the crown, was made subject to a penalty.<sup>11</sup>

It is an interesting and, if I mistake not, a unique fact that both houses in their address Feb. 24th counselled the king to put into operation the provisions of an act not yet passed.<sup>12</sup> So artfully had the plan for assassination been laid, that not till the very night before the tragedy was to have been perpetrated, did the first knowledge of the existence reach the ear of the king, and then from the mouth of one of the conspirators. What assurance had the government that the hopes of the Jacobites would not yet be realized through other means.

1. Journal of House of Commons	Vol. II	p. 468	8. Parl. Hist Vol 5	p. 990
2. " " " "	" II	p. 478	9. " " " "	p. 991.
3. " " " "	" II	p. 486	10. " " " "	p. 993
4. " " " Lords	" IV	p. 691	11. " " " "	p. 993
5. " " " "	" IV	p. 692	12. Atm	p. 25.
6. " " " "	" IV	p. 696		
7. " " " Commons	" II	p. 497.		

I have additional evidence that the Suspension Act did not extend to December. In a statute entitled "An Act for the better security of his Majesty's royal person and government," signed by the King April 27. 1696. it was enacted, "That it shall be and may be lawful to detain in custody, without bail, or mainprize, any person who is, or shall before the last day of Trinity term (June 12. 1696.) be arraigned upon information upon oath against him for High Treason: until first day of December 1696 unless such person shall be sooner bailed by order of council, signed by six of his Majesty's privy council, any law, or statute to the contrary notwithstanding."

Act. 7 Will. III. Cap. 27. Clause 22,

This provision did not have the force of a suspension of the Habeas Corpus. It applied to persons who had been arrested for High Treason, not on mere suspicion, but on information supported by oath. Again the denial of bail unless when otherwise ordered by the council, was not made obligatory, but only lawful... Now if the Suspension of Habeas Corpus had extended to December the above statute would have had no force, since the suspension itself would not only have covered the fact but much more.

(b) See Article "John French" in ~~the~~ Dictionary of National Biography.

Gordman and Porter alone could testify against him. Gordman was bailed to leave England and left. Law required 2 witnesses to convict of Treason. Recourse had to be had to Bills of Attainder.



This amendment, apparently like similar ones on subsequent suspensions, merely enlarged authority to apprehend on suspicion. If such is the case, then the act of 1696 very likely expired September 1st of that year.<sup>2</sup>

The excitement into which the nation was thrown by the revelation of the plot for assassination and invasion was intense in the extreme. The very suggestion of violence dealt by treacherous means has always aroused in the English a deep sense of abhorrence, while the reward of One Thousand Pounds for the apprehension of the principal conspirator added a peculiar flavor to the higher motive for action. To meet this impending invasion the militia flew to arms from one end of the country to the other; the fleet put to sea, while the police system of surveillance<sup>and</sup> domiciliary visits was imported to apprehend the conspirator. The gates of all the principal cities were closed while an active search was made for all who had escaped the hands of the law. "During a few days," says Macaulay, "it was hardly possible to perform a journey without a passport, or to procure post horses without the authority of the police." Some were taken while in bed others in carriages attempting to make good their escape, through means of disguise. Porter and Keyes were taken only after flying<sup>through</sup> Surrey pursued by the Duke and Gwy. After the close of<sup>the</sup> session, on April 27th, many arrests were made. Pity was felt for those whose offence was purely of a political nature; but for Barclay and his miserable band of assassins<sup>murderers</sup> was shown. Of the ten who were tried and convicted, eight were executed. "It is somewhat remarkable," writes Somerville who was 21<sup>years old</sup> at the time, "that all the persons apprehended upon suspicion, were convicted upon the clearest evidence and according to form of law, except Sir John Fenwick, in whose case the government found it necessary to have recourse to a bill of Attainder."<sup>2</sup> In the last measure he tells us, the severity of the government was generally condemned.

After the brief suspension of the Habeas Corpus Act in 1696, nineteen years elapsed before the guarantees of that famous document were again curtailed. During the remainder of William's reign and that of his successor, the dangers of an invasion, or an insurrection by the Jacobites were at no moment so eminent as to justify any sacrifice of personal liberty in behalf of common safety. In fact the ill-fated attempt in 1696, to restore the Stuarts to the throne by force of arms

1. Macaulay Vol 5 p. 98-99.

2. Parl. Hist. Vol. 5 p. 994-5 (foot-note)

convinced the Jacobites that their only hope in that direction lay in securing by act of Parliament, a recognition of the Stuart right at Anne's death. The plan proved furtive in 1701, when the Act of Settlement placed the House of Hanover in line of succession. Fortunately, no doubt, for the peace of England, James II died in this year, leaving to a child of thirteen years his claim to the English throne. Whatever thought of violence which might have been recently entertained was immediately forgotten until the Chevalier de St. George as <sup>the</sup> youthful heir was afterward called, should be old enough to take an active part in working out his own salvation. Fortune once more seemed to smile on the exiled family, when in 1710 the Tories again gained the ascendancy in the affairs of state. The feeling between the two great political parties was decidedly hostile. As soon as it was generally known that Anne's probable successor was an ardent supporter of Whig principles, the more ardent Tories once more turned to James. Anne herself, personally favored the Stuart cause. At times it seemed probable, the Act of Succession would be <sup>ruined</sup> one almost insurmountable barrier stood in the way. In vain did Oxford and Bolingbroke importune James to renounce, nominally at least, his adherence to the Catholic faith.

As the queen's death drew visibly near, prospects of Jacobite success grew brighter. Ireland was ready to revolt at any moment in the name of Catholicism, while Scotland seething with discontent since the passage of the Act of Union would gladly have taken up arms in the behalf of the descendant of Mary Queen of Scots. Bolingbroke, champion of the Stuart cause, for hope of personal gains had scarcely been made chief minister when August 1, 1714, Anne passed away. "Never perhaps," says Macon, "were the most reasonable calculations of judicious and reflecting men more thoroughly or more happily falsified at the death of Queen Ann. Looking to the distracted state of parties in England, - to the storm of disaffection ready to burst forth in Ireland and Scotland, remembering that the Hanoverian Succession would be discountenanced by all the Catholic Powers from religion and by many of the Protestants from policy, that France and Spain and Italy were as favorable to the Pretender as they dared, that George's claims would be promoted only by the exhausted republic of Holland, or infant monarch of Prussia, reviewing also the genius of Bolingbroke and his ascendancy over the queen, the demise of the latter could only be anticipated as

*1. Macon. Vol. 1. 14. 54-56.*

a period of violent struggle and a doubtful victory." Had all the various parties of opposition acted in harmony and with decision, the result would no doubt have been quite different. Louis XIV feeling that his own end was rapidly approaching, hesitated to give England any excuse for breaking the Treaty of Utrecht.<sup>1</sup> The Pretender himself without <sup>any</sup> ~~lacked~~ <sup>able</sup> ~~initiative~~ council to direct his wavering and faltering policy. Jacobites in England and Scotland, when action was most necessary, were ~~surprised~~ <sup>amazed</sup> by their brilliant prospects of success. "There is the best cause in Europe <sup>lost</sup> ~~lost~~ for want of spirit," exclaimed the Bishop of Atterbury.<sup>2</sup> While the Jacobite forces were thus lying dormant, the Whigs were all action. Aside from a few isolated ineffective riots all Jacobite feeling apparently disappeared, amid the great enthusiasm shown the Protestant claimant.<sup>3</sup> Scarcely had the queen breathed her last when the Privy Council under direction of Duke of Shrewsbury met and proclaimed George of Hanover the lawful king of Great Britain, France and Ireland, and constructed and interim Government with Whigs in absolute control. The principal cities throughout the realm, immediately followed the example set by Privy Council, and proclaimed George, King amid imposing ceremonies.

George arrived in England September 18,<sup>4</sup> "Unable to comprehend the working of that Constitution over which he ~~home~~ <sup>to</sup> preside," says Bright,<sup>5</sup> and without ability sufficient to carry on a policy of his own, he naturally threw himself into the arms of that party to which he owed his crown. The new ministry <sup>now</sup> constructed, proved complete victory for the Whig party.

Several months elapsed before the Jacobites recovered from the lethargy into which they had been thrown by the sudden death of the late queen. In fact it was only the vindictiveness of the victorious Whigs that at length aroused them to action. Parliament had here dissolved in January as provided in the Act Succession. In the new house which met in March, the Whigs had a tremendous majority.<sup>6</sup> Still smarting from treatment they had received in the preceding reign, the Whigs now used the self-same weapons to ~~punish~~ <sup>punish</sup> their former oppressors. The plan was soon apparent to all. <sup>On</sup> March 23, <sup>the</sup> Commons appointed a Committee with Walpole as chairman to draft an address of thanks to the king. Following the example of a similar address by the Peers, they loudly expressed their re-

1. Mahon, Vol. 1 pp. 94.

2. Mahon, Vol. 1 pp. 114

3. Mahon, Vol. 1 pp.

4. Mahon, Vol. 1 pp. 94-5.

5. Bright, pp. 931.

6. Mahon, Vol. 1 pp. 118

7. Parl. Hist. Vol. 7. pp. 47.



a The Riot Act provided that if 12, or more persons be  
assembled for unlawful purposes, a justice was  
authorized to order them to disperse. If they  
should continue together for an hour after this order had  
been given them, they were guilty of felony without  
benefit of clergy. This law has ~~been~~ now been repealed  
but has scarcely ever been resorted to.

Makew., Vol. 1, p. 133.



sentment that the Pretender should still be permitted to reside in Lorrain from whence he was ever striving by means of declarations and manifestoes to stir up rebellion in England. "But," continued the address by the Commons, <sup>that which caused the public indignation of your Commons is</sup> that it appears therein, that his hopes were built upon the measures that had been taken for some time past in Great Britain. It shall be our business to trace out those measures whereon he placed his hopes, and to bring the authors of them to condign punishment." Though certain reflections upon the late queen's reign and the recent peace occasioned a warm debate, the address as prepared by the committee was received by a safe majority. "This," says Mahon, "was the first authentic announcement of the intentions of the Ministers to call their predecessors to account."<sup>2</sup>

On April 9,<sup>1746</sup> Secretary Stanhope laid before the House all accessible instructions and documents relating to the late Peace. Because of their bulk a Secret Committee of 21, principally Whig, was chosen to investigate these papers inquiring into the late Peace and management of the late queen's Ministry. The Committee, of whom Walpole was made chairman carried on its investigation for two month's with a spirit of party zeal and personal resentment. On June 9, they laid before the House an elaborate report. As a consequence, Bolingbroke, Oxford, and Ormond were immediately impeached for High Treason. Ormond following the example of Bolingbroke, in March fled to France. Against these fugitives, Acts of Attainder were passed with little, or no opposition, while Oxford, who had resolved to face the gathering storm, was committed to the Tower. At this distance of time these measures appear not only injudicious but extremely unjust. For having drawn up a treaty of Peace which had been received by both government concerned and passed upon by two different Parliaments were the former ministers now convicted of High Treason.

The very vindictiveness of the Whig and the visible displeasure of the king turned many a Tory who had a few months before supported George, into warm adherents of the Stuarts. Bolingbroke, Ormond and Mar undertook the direction of the powerful, but hitherto unharmonious, Jacobite forces in France, England and Scotland respectively. In the meantime Tory riots were reported from various sections of the country, particularly Staffordshire. So serious did this matter become that Parliament felt called upon to revive the Riot Law of the time of Mary and Elizabeth.<sup>2</sup>

1 Parl. Hist, Vol. 7. pp. 48

2 Mahon, Vol. 1 pp. 119.

3. Account of prosecution

See Mahon Vol 1. pp. 119-132.

Bright. 231-2.

July 20, the king appearing before the Peers thanked Parliament for having provided a law to prevent riots and tumultuous proceedings. "But," he continued, "such a spirit of rebellion has discovered itself, as leaves no room to doubt but these disorders are set on foot and encouraged by persons disaffected to my government, in expectation of being supported from abroad." The Pretender from a-broad and a restless party at home acting in his favor, he believed, were the source of all the present troubles. He appealed to Parliament in behalf of their own security, not to leave the nation in a defenseless condition with a rebellion actually begun at home, and threatened with an invasion from abroad. "I shall look upon the provision you shall make for the safety of my people," the king concluded, "as the best mark of your affection to me." The address was immediately acted upon in each house by a vote of Lives and Fortunes, <sup>measures of</sup> ~~measures of~~ immediate-ly followed.

Though I can find no positive statement to that effect it seems to me quite probable that Parliament at once passed an act suspending the Habeas Corpus.<sup>5</sup> As the most effective measure for such extraordinary occasions, this act would be among the first revived to anticipate the impending dangers. The first definite statement that such a measure had been placed in operation, I find in the Parliamentary History for the date September 21, after ~~insurrection~~ <sup>the rebellion</sup> in Scotland under Lord Mar was well in progress. On that date Stanhope informed the Commons that the king having good cause to suspect that six members of that House were engaged in the design to support the intended invasion of the kingdom, had given orders for their arrest. "His Majesty," continued the Secretary, "desires the consent of the House to his causing them to be committed and detained: if he shall judge it necessary so to do in persuance of the late Parliament, for empowering His Majesty to commit and detain such persons as his Majesty shall suspect are conspiring against his person and government."<sup>4</sup>

From the above we see that the Habeas Corpus Act had been suspended between July 20 and September 21. For reasons which I shall presently give, I am led to believe that the Act was passed in the latter part of July just after the king's address in the House of Peers, July 20, warning Parliament against the impending attacks by the Jacobites.

1. *Parl. Hist.*, Vol. 7. p. 111.
2. *Parl. Hist.*, Vol. 7. pp. 112-13.
3. *Makew.*, Vol. 1. p. 152.
4. *Parl. Hist.*, Vol. 7. p. 216.
5. 1 Geo. 1. Cap. 8.

*W* September 6, <sup>1744</sup> Mar raised the standard of revolt in Scotland. At first fortune seemed to smile on the Jacobites. By end of October, Mar stood at head of 12,000 men, master of Scotland as far as south as the Forth. Later ~~in~~ October a division of the Highland troops under Foster entered England and marched south along the Cheviots in hope of arousing an insurrection. Disappointed in this hope, they meet with a fatal repulse at Preston, November 13. On the same day Duke Argyle defeated Mar at Sheriffmuir. Apparently the rebellion was now broken. Preston had demonstrated the hoplessness of arousing an insurrection in England, while Mar and his ill trained, half starved Highlanders had shown themselves incapable of holding what they <sup>had</sup> won. The arrival of the Pretender, December 22, however, changed materially the complexion of the whole matter. At first, ~~proceeding~~ <sup>proceeding</sup> cautiously to make sure of his ground; but presently throwing off disguise, he assumed royal honors at the royal palace of Scone, January 8, issued proclamations of state and fixed the date for his coronation January 23. The very rashness of the Pretender threw the English Government on the wrong track. They felt confident that James would not venture upon such an undertaking, unless supported by France.

Parliament which had been adjourned September 21, convened January 8, <sup>1746</sup>. Apparently the first Act of Suspension of Habeas Corpus was soon to expire. Fearing ~~the~~ <sup>the</sup> worst since knowledge of the Pretender's undertaking had reached their ears, the Whigs resolved to continue its operation sometime longer. (January 21, the Lords took up for consideration a bill from the Commons, "For continuing the Act to empower His Majesty to secure and detain suspected persons."<sup>2</sup> Certain of the Tories endeavored to limit the effectiveness of suspension. Lord Hascourt proposed a clause, "For assigning the reason of the committment, and for furnishing informers in case they accused innocent persons, and also for excepting Peers out of the Act."<sup>3</sup> Though supported by Trevor, Buckingham, and Abingdon, the ~~most~~ <sup>motion</sup> was lost (64-14).<sup>4</sup> The bill continuing <sup>three</sup> months longer then passed without amendment.<sup>5</sup> Abingdon offered a dissentient, protesting that continuing an Act by reference only, deprived the House of the opportunity to debate freely the several parts of the Act so continued; that the ministers were not sufficiently restrained in the execution of the power, thus granted over the liberty of everyone; that the privilege of Parliament was insufficiently provided for, that the effect of the Act was to limit freedom of speech in Parliament.<sup>6</sup>

1. Mahon, Vol. 1 pp. 135-147 (very good general account of Rebellion)
2. Parl. Hist., Vol. 7 H. 275
3. Parl. Hist., Vol. 7 H. 275
4. Parl. Hist., Vol. 7 H. 276
5. 1 Geo. 1 Cap. 30.
6. Parl. Hist., Vol. 7 H. 275-6



a. If I had access to ~~the~~ Journals of House of Commons  
the matter would be quite simple.

(b) A very able article appeared in a London Journal 1722  
supporting the action of Parliament in suspending  
the Habeas Corpus Act at that time. The Act under  
consideration was for one year. Precedent it was  
maintained did not support so long a term, "But  
it is said precedents are against you. The Suspension  
never yet was made for so long a term. It may be  
so. Though one was continued to nine months." The  
writer must have had the period of ~~1715~~ 1715-16 in  
mind, for that was the only period, as we have  
seen, to which the statement would hold true, if  
the Suspension in 1715-16 was for nine months  
the Continuance Act. would not have been longer.  
than for 3 or 4 months, since the the Suspension Act  
proper was certainly for 4½ months a long

See foot note. Parl, Hist, Vol 8. pp. 29-36.



The bill, we are told, encountered strenuous opposition in the House of Commons. Insisting, "That the present act invaded the most ~~the~~ valuable right of English subjects, encouraged malicious information, and gave a handle to those in power to oppress the innocent." Shippen, a consistent adherent of the Jacobite cause in the House, moved that a clause be inserted to prevent illegal imprisonment and for the better securing the liberty of the subjects in cases not within the purport of the said Act. He was answered by Stanhope, who after showing the necessity of such a measure in times of open rebellion, appealed to the House whether the king, or his minister had made an ill, or wanton use of the power intrusted to them by Parliament. Shippen's motion was negatived.<sup>2</sup> As was the case in the last Act of Suspension in 1689, though strenuously opposed, the Whigs in spite of determined opposition from the Jacobites and Tories, forced the Continuation Act to its successful passage.

It was then, as we have seen, the impetuosity of the Whigs in <sup>the</sup> Spring 1715, that at length aroused into flames of rebellion the smouldering fires of the Jacobites and their sympathizers.<sup>4</sup> On July 20, the king in person warned Parliament against the impending dangers of an invasion encouraged by malcontents from within the realm itself.<sup>5</sup> Immediately each house passed a vote of Lives and Fortunes and together put into operation such laws as the emergency seemed to demand.<sup>6</sup> As has already been suggested, it is quite probable that the Habeas Corpus Act was suspended sometime before the end of July.<sup>7</sup> If Parliament was as thoroughly aroused as their words indicate, they would naturally turn to the above measure as the most effective to meet the danger. As I have said the first positive statement that such a law had been passed, I find for the date September 21st. Addison in the Freeholder for February 18, 1716 says that, "The necessity of this law at the time arose from the prospect of an invasion, which has since broken out into an actual rebellion."<sup>3</sup> Since September 6, is the date on which Mar raised the standard of revolt in Scotland the Suspension Act, if we can trust Addison must have been passed before this event at least. If the Suspension Act was passed in the latter part of July for a term of six months, we see that would have expired the latter part of January 1716, the very time when it was actually renewed by a Continuation Act. The latter Act which continues the former by reference merely, was made for a term of three or four months only.<sup>4</sup>

1 *Parl. Hist.*, Vol 7. p. 276-6

2 *Parl. Hist.*, Vol 7. p. 277.

3. *Addison's Freeholder*. No 16,

4 *Abm* p. 31.

5 *Abm* p. 82.

a. It was customary at that period to suspend the Habeas Corpus Act in Scotland by a special clause in the suspension Act proper.

b. Addison was Secretary of State, and as such speaks with more authority than a mere pamphletist.

It is difficult to say just how effective the Suspension of Habeas Corpus proved at this period. As has been seen, six members of House of Commons were arrested under its authority.<sup>1</sup> The action of the king was sanctioned by the House September 21. Many persons we are told, were arrested and imprisoned in Scotland, by reason of the Suspension of Habeas Corpus in that country.<sup>2</sup> According to another ~~similar~~ measure, the king was unable to summons to Edinburgh all suspected persons, and require them to give security for their good conduct.<sup>3</sup> The Act put into force at once by the Lord Advocate proved worse than a failure, since the persons summoned not only refused to appear, but came out openly for James, when perhaps they would have remained neutral at least.<sup>4</sup> At every period of Suspension the government encountered very considerable popular odium. This natural feeling was so pronounced in 1715 and 1716, that Addison, a member of the ministry, felt called upon to devote one entire number of his political publication, "The Freeholder" to an explanation of and a justification for the Suspension of Habeas Corpus.<sup>5</sup> "The expediency and reasonableness of such a temporary suspension in the present juncture may appear to every considerate man, who will turn his thoughts impartially to this subject." Then followed one of the best arguments to be found anywhere in the support of such a measure. Speaking of the present act at the close of his paper, he says, "We have already found the good consequences of this suspension, in that it has hindered the rebellion from gathering the strength it would otherwise have gained, not to mention those numbers it has kept from engaging in so desperate an enterprise, with the many lives it has preserved, and the desolation it has prevented." Concerning the exercise of the power thus intrusted, Addison tells us that the persons confined were treated with all possible humanity, and that nothing but the liberty of hurting their country was abridged.<sup>6</sup>

Between the spirit and decision of the government, and the wavering, faltering policy of the Jacobites, the rebellion ~~very~~ <sup>early</sup> proved a dismal failure. Dispairing of further success, the Pretender and Mar secretly embarked for France, February 4<sup>1746</sup> leaving their troops to escape the arms of justice as best they could. Four days later the rebel army in grief, disbanded at Aberdeen, the common soldiers in their homes in the Highlands, while the better known fled to the Orkneys, or to the Continent.<sup>6</sup>

1 Abm #1. 32.

2 Mahon, Vol 1 #153.

3 Addison's Freeholder, No 16. (Feb 13. 1716).

4 Bugh, #1. 937

5 - Mahon Vol 1. #190

4 Gardiner says 38 of lower ranks were put to death and many had their estates confiscated  
Gardiner's, *Student's History of England*, p. 706.

then sent to Chester and Liverpool were probably sent  
as indentured slaves to America. Chester Castle is  
in immediate vicinity of Liverpool.

W.C. Atwell



The punishment which followed the suppression of the rebellion has often been criticised as needlessly severe. Yet when we consider the gravity of the offense and the comparatively small number actually punished, we are forced to alter this adverse judgement. Of the seven noble prisoners six were sentenced, though two only were eventually executed. Many of the prisoners taken at Preston were summarily tried and shot, 500 sent to Chester Castle, and more to Liverpool. In Scotland, however, when comparatively few prisoners had been taken much more mercy was shown, no doubt for fear of arousing the Scots to further resistance.

Although the consideration of Indemnity Acts following the Suspension of Habeas Corpus Act is reserved for a later discussion, I cannot refrain at this place from saying, that the first act of this nature was passed in 1716.<sup>3</sup> The exact date of its passage is not given, but it appears in the Statute at Large immediately following the Septennial Act signed on April 26, 1716, about the time the Continuation must have expired. While the Suspension of the Habeas Corpus is not mentioned, the Act evidently supplements the earlier measure. It indemnified all Lords and Deputized Lieutenants, justices of the peace, mayors, bailiffs of corporations, constables and other officers, who had apprehended and imprisoned criminals and other persons whom, "They suspected might disturb the public peace or foment or promote riots, tumults, rebellions, or evil designs, against the government," before and after the rebellion which broke out in September, or October 1715. They were indemnified against all personal actions and such, not only for seizing persons on suspicions but also for seizing horses, carts etc., and for entering houses and quartering soldiers there. "These acts," says the statute, "though not justified by the strict forms of law were necessary and so much for services of the public, that Parliament ought to indemnify them."

1. *Mahon, Vol. 1. pp. 199.*
2. *Bright. pp. 938*  
*Mahon, Vol. 1 pp. 196-99.*
3. *1 Geo. 1 Cap. 39.*

Scarcely had the Rebellion of 1715-16 been crushed when the

Whigs still apprehensive of their position in spite of their apparent success passed the Septennial Act. The Jacobites on the contrary, although their plans had been constantly brought to naught, did not despair of restoring eventually the Stuarts to the English throne. During the succeeding three or four years the changes in foreign policy seemed to favor their ultimate success. While the French Regency under the Duke of Orleans was led through a policy of self protection to enter into a defensive alliance with the House of Hanover, the Swedish Napoleon, Charles XII, acting in harmony with Spain, were threatening to restore the Stuarts.<sup>2</sup> The project, however, was happily brought to an untimely end by the death of Charles XII, 1718 and the fall of Alberoni the year following. The Whigs had scarcely negotiated the Quadruple Alliance to defeat any future attempt by combined power to restore the Stuarts, when the nation was thrown into the wildest commotion by the bursting of the South Sea Bubble, the most far reaching, and disastrous financial blunder in English history. The death and ruin following its inevitable collapse occasioned a wide spread discontent and dissatisfaction with the government.

Differing on questions of foreign and home policies, the Whigs at this moment split into two factions; one headed by Stanhope and Sunderland, the other by Walpole and Townsend. The former in control of the administration during the existence of the South Sea Bubble, were called upon to suffer the odium which the failure of that scheme produced. Placed at the head of a commission for the investigation of the ministers, Walpole with the aid of the public opinion soon displaced his rivals and assumed complete control.

Various circumstances combined to make the present crisis an opportune moment for the Jacobites. The powerful Whig party loudly condemned throughout the country for its apparent complicity in the recent financial outrage, was suddenly wrecked by violent disputes between divisions within its own ranks. Walpole was known to be an irreconcilable enemy of the Jacobites. The sudden death of Stanhope threatened to disrupt the late Quadruple Alliance, one of the insurmountable barriers to Jacobite success. The birth of Charles Edward, the Stuart heir did more perhaps than anything else could have done to arouse among the Jacobites a personal enthusiasm for the claims of the exiled family.

1 Brought p. 953.

2 Gardiner p. 709.

(a) "The arrest of the Bishop of Exeter, for the first time since the ill-omened precedent of James II. was known, no sooner known than it produced a general clamor." Clamor came from High Churchmen who had already inveighed against the government, *Mason, Vol 2 pp. 38*

(b) A very graphic account of the various arrest attempts and successes at escape given by Tindal and printed in Part. II. Vol 7 pp 982-88.



The Jacobite movement began about Christmas 1721. Calls for aid were sent to nearly every court in Europe, but were met with refusal everywhere.<sup>1</sup> Soon forced to forsake hope of foreign assistance, the Jacobites relying on their numbers and the unsettled condition of the government and believing that the Duke of Orleans would take a neutral position, resolved to undertake the enterprise alone.<sup>2</sup> A Committee of Five consisting of Lords Orrery, North, Gower, Earl Arran and Bishop Atterbury were chosen to direct the movement.<sup>3</sup> Vast sums of money were collected, foreign military officers employed and troops disciplined.<sup>4</sup>

From almost the very first, Walpole tells us, the government began gathering knowledge of the conspiracy.<sup>5</sup> In his speech just before dissolving Parliament March 10, the king said, "You must all be sensible, that they (Jacobites) are at this junction reviving with the greatest industry, the same wicked arts of calumny and defamation, which have been the constant preludes to public trouble and disorders."<sup>6</sup> In the early part of May, the Duke of Orleans in whom the principal intriguers had confided their plans, disclosed to George the details of the whole conspiracy.<sup>7</sup> An expedition under James and Ormond was to land in England and operating with a general uprising among the Jacobites at home, to seize the Bank and Exchequer and then profiting by the general discontent, proclaim the Pretender, King of England.<sup>8</sup>

Having gathered the details of the conspiracy, the government took prompt action to anticipate its fulfillment.<sup>9</sup> The king postponed his visit to the continent. A camp was established at Hyde Park and London was guarded by troops. Townsend laid the matter before the Mayor of London and the aldermen of that city addressing the king expressed their abhorrence of the detestable scheme and promised to do all in their power to support the king.<sup>10</sup> Other cities followed London's example. Though still believing it imprudent to publish the details of the conspiracy the government at once began making arrests. May 21, George Kelley, an Irish clergyman was apprehended.<sup>11</sup> In August Robert Cotton, Cochrane and Smith were seized and a reward of £1000 offered for John Sample and Thomas Carte.<sup>12</sup> On the 21st of the same month Atterbury, Bishop of Rochester, was placed under arrest. During September ten more persons were taken.<sup>13</sup> Three of the Committee of Five were now in custody. In spite of many arrests the conspiracy still continued to thrive. At length feeling his inability to grapple the situation, George called a special session of the newly elected Parliament.

1 *Parl. Hist.*, Vol. 8 p. 40.

2 *Mahon*, Vol. 2. p. 34

3 *Bright*: p. 954

4 *Bright*: p. 955.

5 *Parl. Hist.*: Vol. 8 p. 40

6 *Parl. Hist.*, Vol. 7 p. 985.

8 *Mahon*, Vol. 2. p. 35-40.

9 *Parl. Hist.*, Vol. 7. p. 984-5.

10 *Parl. Hist.* Vol. 7 p. 986-7.

11 *Parl. Hist.*, Vol. 7. p. 988

12 *Tindal's. Hist. of Eng. in Parl. Hist.* Vol. 7. p. 986.



When the two houses met <sup>on</sup> October 9, the Whigs held an overwhelming majority. The death of Stanhope and Sunderland dissolved the factions which had recently divided the party and made Walpole complete master of its now united forces.

In an address to Parliament October 11, <sup>the</sup> king gave as his reasons for calling a special session, the existence of a dangerous conspiracy against himself and the kingdom and in favor of the Pretender.<sup>2</sup> After a brief description of the nature of the plot and the measures taken to anticipate its success he said, "I cannot but believe that the hopes and expectations of our enemies are very ill founded, in flattering themselves that the late discontent occasioned by private losses and misfortunes, however, industriously and maliciously formented, are turned into disaffection and a spirit of rebellion."<sup>2</sup> Though he believed that the nation would not submit to the Pretender and Catholic religion, still he realized that the Jacobite agitation was seriously crippling industry and demanding vast expenditures of public money. Speaking of the present need for harmony and vigor, he said, "Our enemies have too long taken advantage of our differences and disadvantages. Let the world see the general disposition of the nation is no invitation to Foreign power to invade us, nor encouragement to domestic enemies to kindle a civil war in the kingdom."<sup>2</sup>

The king and the Commons having retired from the House of Lords, the Duke Grafton, first dwelling on the necessity of placing in the hands of the king's ministers a power sufficient to detect and suppress the various designs and conspiracies against the king's person and the government, presented a bill for the Suspension of Habeas Corpus for one year.<sup>3</sup> In spite of warm opposition, a motion that the bill be read a second time carried 67 to 24. Being now read a second time, the bill was immediately referred to the Committee of the Whole when the blank for the continuation of the act proposed was filled with the words, "until the 24th day of October 1723."<sup>4</sup>

An obstinate debate followed the report by the committee. Earls Anglesea, Cowper, Stafford, Coningsby; Lords Trevor, Bathurst and Bingley, while admitting that in case of actual rebellion, or intended invasion, wisdom demanded a momentary Suspension of the Habeas Corpus, <sup>but</sup> argued that nothing but absolute necessity could justify a suspension of the greatest and strongest bulwark of English Liberty.

1. Bright, p. 954
2. Parl. Hist., Vol 8. p. 25-27
3. Parl. Hist., Vol 8 p. 27
4. Parl. Hist., Vol 8 p. 28

Never before had it been suspended for more than six months by a single act. The present act for twelve months might, they feared be taken as a precedent for a still longer suspension. The government, moreover, had learned of the details of this conspiracy for five months past and had already apprehended the principal conspirators. Was it natural to believe that in the hands of able ministers, the present danger threatening the kingdom would continue so long as to justify the suspension of personal liberty for a year? Even among the Romans dictatorial power was laid aside as soon as the occasion for its existence had passed. In the following Spring the king would in all probability visit his continental possessions, leaving this extraordinary power to be exercised by ministers who might use it for private, or political revenge. The fact too, that members of Parliament would not be exempt from the provisions of the act, during the vacation of that body, would limit materially their full enjoyment of freedom of speech, while Parliament was yet in session. Since the present act would cause so many inconveniences, they would propose that it be limited to six months at the end of which time it could be extended if it was thought advisable.

The above objections we are told were ably met by Townsend, Harcourt, Carteret, Argyle, Newcastle and others, who showed that the present occasion was more pressing than the former ones, that one year would be necessary, since the conspirators would probably lie idle all Winter and renew their efforts in the Spring and Summer, during vacation of Parliament and when the possibility of foreign aid would be more hopeful?

The report of the committee being now received, and the bill was passed without a division and sent to the Lower House<sup>3</sup>, all on the same day in which the king had communicated to Parliament the knowledge of a Jacobite conspiracy. Nineteen Lords, however, drew up a "dissentient" of five clauses in which they stated in brief their objection to the bill as given above.<sup>4</sup>

On October 15th, on motion by Walpole, the Commons took up for first reading this bill from the Lords.<sup>5</sup> In the Committee of the Whole the day following the measure was opposed on very much the same grounds as in the Upper House. Spencer Cooper, a Whig, moved that the bill be limited to six months. Another Whig, Joseph Jekyll, while supporting the motion added that if after six months had elapsed, necessity still required its further suspension, it could be easily extended. But Robert Raymond, the Attorney General, argued that the present conspiracy was so wide spread and deeply laid that a year would be required.

1. *Parl Hist* Vol ~~27~~<sup>28</sup> 30. Vol 8 H. 27-30

2. *Parl Hist* Vol 8 H. 28

3. *Parl Hist* Vol 8 H. 30-31

4. *Parl Hist* Vol 8 H. 35-6

5. *Parl Hist* Vol 8 H. 38

6. *Parl Hist* Vol 8 H. 38-41

101 Oct 17. The King came to the House of Peers with the usual solemnity and the Commons attending his Majesty and gave his royal assent to said bill.  
Parl Hist., Vol. 8 ff. 41.

Title only given in statute at large.

102 Oct 26. Lord Townshend informed the Upper House that the King had cause to suspect Duke Norfolk was engaged in a treasonous conspiracy carrying on, and caused him to be apprehended, and did desire the consent of the House, that the said Duke might be committed and detained, ~~that~~ Motion carried to consent to the said Duke being committed and detained accordingly. Opposed by Sir Algernon Cooper, Aug. Lewis. Shifford, Cuninghame, The Judges, Balthurst-Lichfield and others. Answered by the count, Townshend, Newcastle, Carlisle.

Motion carried 60-28.

Long dissident signed by some and others, in all 20. Objected that neither be detained on grounds of mere suspicion and house accept mere statement of minister without further proof.  
Parl Hist Vol. 8 ff. 44-46



to unravel it. Walpole taking the floor, reviewed the progress of the conspiracy, showed the necessity of prompt action and urged that, since the Lords had made the bill for one year, it would be dangerous at that critical moment to risk a difference with the Upper House.<sup>1</sup> The motion that the bill do now pass, as sent down by the Lords, it was carried by a vote of 246 to 193. The bill suspending the Habeas Corpus Act till October 24, 1723 was then read the third time and passed without division. Oct. 16, 1722.<sup>2</sup> On the day following, the House voted an Address of Thanks to the king for calling Parliament in the present crisis and promised that they would with their lives and fortunes support him against all enemies at home and abroad.<sup>2-6</sup>

A few days after the above Act had gone into operation, there appeared in a London Journal an article setting forth in a clear and forcible manner the reasons which justify a suspension of the Habeas Corpus.<sup>3</sup> After calling attention to the general uneasiness resulting from the late Suspension, the writer who signed his name "Britiannicus," says that the present act is absolutely necessary to secure the people from ruin, and the loss of the Habeas Corpus Act itself. In answer to the question whether it is fit upon any occasion to suspend the ordinary operation of the Habeas Corpus, he said it had been constantly resolved without hesitation in the affirmative, by the wisdom of all Parliaments since the making of that act. "Their behavior and the laws made by them, have ever showed that it was determined case with them, that upon occasion of any conspiracy against the state (the execution of which always depend upon the persons of the conspirators, and the liberty they enjoy to advise and act) it was absolutely necessary to grant to the executive power for a time, a right to apprehend and detain the persons of such as should be suspected to have a part in it.----- What imports it to have a roll of parchment called an act of Parliament for the liberty of the subject, if at the call of imminent danger, which threatens the destruction of this act and all acts, there be not a power lodged and exerted to confine the persons of some, that the persons of all may not suffer by that liberty which such conspirators enjoy, merely by virtue of this act."

The writer goes on to say that in his opinion the opposition to suspension for twelve months came from those persons who in reality opposed any suspension, however short. ~~The~~ opinion was no doubt very largely correct. Realizing their inability to defeat the bill entirely, they hoped to meet with at least a partial success by limiting it to six months. The

1 *Parl. Hist. Vol 8 H. 38-41*

2 *Parl. Hist. Vol 8 H. 41-43.*

3. *Parl. Hist. Vol 8 H. 29-37 (in footnotes)*



a Jefferson was required to take oath to support George  
Hamilton in his history takes the stand that the  
testament of the Controller at this time when  
approached prosecution, prejudiced the King's cause,  
though apparently anxious to take the oath, it  
was out of fear that their interests would be  
implicated, if they did not. They at least felt that  
taking the government for placing them to S. Murray  
a Controller was then forced to become a Jacobite.

Memo. Vol. 2 p. 41-42

S. Bill of Pains and Penalties on Plumbel and Kelly  
brought in House March 19. 1723. Parl Hist. Vol  
8 p. 199) against Attorney March 22. 1723,  
(Parl. Hist., Vol 8. p. 207.) All three were  
signed by King May 27. 1723. (Parl Hist Vol 8. p. 363)

writer argues that if twelve months be necessary, if the occasion requires and demands such a time, it is as fitting as twelve days, or twelve hours. "Something must be hazarded to save all and when the whole is danger, a part must not take all our care. A power to save is always in some degree a power to hurt. A power to do good always carries with it a power (though not a right) to do evil." If the ministers, however, should abuse the power entrusted to them, Parliament when it should meet again would certainly hold them responsible for what they had done.

Whether the Whigs were justified in suspending the Habeas Corpus for a term of one year, it is difficult to say. It is true that the king had been in possession of the details of the conspiracy for more than five months and that the principal conspirators had for some time been under arrest. The government was prepared and it seems now quite probable that it could have crushed the conspiracy by the ordinary processes of law. On the other hand, we must remember that the Jacobites had been constantly intriguing with various degrees of success for more than thirty years, and had now combined all their energies to profit by the unsettled state of affairs following the collapse of the South Sea Company. Moved by a spirit of vindictiveness, more perhaps than by a feeling of insecurity, the Whigs had resolved if possible to crush out forever all Jacobite hopes of restoring the Stuarts. The medicine must be of double strength since it was ~~not~~ intended to serve not as a mere relief but a complete cure for future ills. Reposing the fullest confidence in Walpole's ability and integrity they suspended Habeas Corpus for a period twice as long as any previous suspension, increased the army, laid a tax of £100,000 on Nonjurors, ordered prosecutions, and appointed a Committee of Nine Commons, later another of Nine Lords to prepare an elaborate report on the entire conspiracy. Bills of Pains and Penalties were voted against Atterbury, Kelly and Plunket.

At length despairing of success the Jacobites for the time at least gave up their late enterprise. The firmness you have shown, "said the king in his address to Parliament at the close of the session," May 27th, 1723, "must convince all the world, how much they were mistaken, whose chief hopes were founded on the disaffection of my people." Before his departure for Hanover June 3, 1723, the king through a spirit of leniency to the conspirators ordered Earl Orrery, Duke Norfolk, Lord North, and four others released on bail. On 24th Dr. Friend was similarly released and two days later Atterbury was permitted to leave England for France. Though troops were stationed near London to act in case of emergency nothing occurred during

6 *Parl. Hist.*, Vol. 8, p. 366.

- 1 *Parl. Hist.*, Vol. 8, p. 31
- 2 *Parl. Hist.*, Vol. 8, p. 54
- 3 *Parl. Hist.*, Vol. 8, p. 203
- 4 *Bright.*, p. 955-6
- 5 *Parl. Hist.*, Vol. 8, p. 364

"In congratulating the House on their endeavors during the preceding session, the King said in the course of his address, at the opening of Parl. Jan. 9, 1724. "It is to be hoped, that the few examples which were made of some notorious offenders will be sufficient to deter the most disaffected from engaging in the like despatch and wicked practices." Parl. Hist., Vol. 8. p. 872

I find no mention of any considerable arrests. It will be remembered that those persons mentioned in the text - were arrested during the Summer and early fall of 1729. Before the Suspension of the Habeas Corpus Act was passed. They were arrested by the customary method, no doubt, on oath and proof of treasonable notions: not at any rule or mere suspicion as was usual formerly by the Suspension Act. Letters were intercepted which testified to their part in the conspiracy.

Meibom. Vol 2. p. 33-39.

the seven months of the King's absence, to disturb the public peace in England.

Parliament adjourned<sup>a</sup> May 27th, 1723 and convened again January 9, 1724.<sup>b</sup> The Act of Suspension as had been said expired October 27th, 1723, having been in force for one year and one week. In vain do we search among the laws of the preceeding succeeding session for an act of indemnity. Although the longest single suspension on record, contrary to Dicey's statement<sup>c</sup> no Act of Indemnity was passed. The truth probably is that there was probably little need of one. It seems quite probable that few arrests were made under the provisions of the Act of Suspension.<sup>d</sup> Though a very extended conspiracy had been planned the conspirators did little after the extreme measures for their suppression were passed. The Suspension then at this period served as a prevention rather than a cure of treasonable action.

### Chapter VI

Before the final dissolution of the Jacobites who for more than thirty years had menaced the peace of England, the House of Hanover was forced once more to arbitrate by force of arms its ~~its~~ claims to the throne. From the period just considered, Walpole was for nearly twenty years the sole guide of English politics. During this time England consistently adhered to a fortunate peace policy, which thanks to Walpole, did very much to frustrate Jacobite intrigues. In the Autumn of 1739, however, the Prime Minister, yielding to a powerful opposition, reluctantly gave his assent to a declaration of war against Spain.<sup>e</sup> Unable to prosecute with success a war he believed unjustifiable, Walpole resigned<sup>f</sup> February 1742, leaving the affairs of government to a ministry anything but harmonious.<sup>g</sup> In the meantime the war with Spain had become entangled with the European War of the Austrian Succession. Departing from the policy of Orleans and Stanhope, England and France arranged themselves on opposite sides in the great controversy. With the view of embarrassing her old time enemy, France once more espoused the Stuart cause. Cardinal Tencin<sup>h</sup> who succeeded Fleury, the peace minister, felt himself under great obligation to Charles Edward, through whose influence, it is said the former had obtained his cardinal's hat.<sup>i</sup> The English Administration too, was not ~~of~~ a conciliatory ~~tone~~ <sup>one</sup>. England wanted war and the ministers were strongly inclined to comply with the desire. Hoping to strike the first blow, Marshall Saxe during the Winter collected 15,000<sup>j</sup> troop at Dunkirk for an immediate descent on England.<sup>k</sup>

1 Parl Hist Vol 8 p. 266.

2 Parl Hist Vol 8 p.

3. Above p. 22.

4 Bright p. 982-3

5 Gardiner p. 730

6 Bright, p. 987-8.

7 Lecky Vol 1. p. 447.

8 Bright, p. 994.



a Lord Barrymore and Col. Cecil were arrested and examined, but no material discoveries being made against them they were soon afterwards released.

Lord Barrymore was an Irish Peer member of the House of Commons in England. Was at that time the oldest Lieutenant General in the service, he died 1747. age 80. Temperament 'wholly' devoted to the exiled family.

Maton. Vol 2. p. 161 & vol.

6. His Majesty having received undoubted intelligence that the eldest son of the Pretender to the crown, is arrived in France and that preparations are making there to invade the Kingdom, in concert with disaffected persons here, and that such invasion is to be supported by the squadrons of French men of war which have been cruising several days in the British channel. — and to his Majesty's doubts not, ~~of your~~ <sup>the former</sup> experience, zeal, duty, affection of the House of Lords, they will ~~not~~ strengthen his hands and concert in all such measures as shall be necessary for disappointing and defeating so dangerous an attempt — and for the security of his person and government.

Parl. Hist. Vol. 13. p. 641-43-

Preamble of 17, Geo. II, Cap. 6

"Whereas the nation is threatened with an invasion by a French power, in concert with disaffected persons at home, to the subversion of the Protestant religion, and the laws and liberties of this Kingdom, and for the better preservation of his Majesty's sacred person and for securing the peace of the Kingdom in the time of imminent danger, he it enacted," etc.

After many rumors of a French invasion to be supported by the Jacobites at home and abroad, reached the king's ear, George II laid before Parliament, "January 15, 1744 a special message warning that body against the impending danger and urging vigorous and immediate legislation." During the next month the various rumors, and probabilities of invasion were thoroughly investigated. "February 28, the Chancellor informed the House that the king having good reasons to suspect James, Earl of Barrymore of treasonable practices," had ordered his arrest on warrant for High Treason.<sup>3</sup> But out of respect for the privilege of the House, he desired their express approval for what he had done. As on similar occasions in 1715 and 1722 the request was immediately granted."

On the same day, February 28, the Attorney General introduced into the House a bill suspending the Habeas Corpus two months.<sup>5</sup> The only opposition the bill encountered, I believe was on political grounds. George Grenville, Pelham's rival warned the House against the dangers of entrusting their liberties to an incensed and mal-administration.<sup>6</sup> There was no cause of alarm, he argued, France intended merely to frighten, not attack England. The Chancellor, on the contrary, assured the members that the government remained quiet until rumors of invasions had been supported by many concurring trustworthy informers.<sup>7</sup> Besides the short time for which suspension was asked attested the good faith on the part of the ministers.

On the ~~morning~~ <sup>following day</sup>, February 29th, Lord Barrington, Admiral Vernon and Sir John Philipp strove to secure a weeks delay for a fuller consideration of the bill.<sup>8</sup> Their motion lost 181 to 83. Most of the Tories, we are told voted in the affirmative, while Pitt and certain of his adherents declined to express their opinion. The bill was then passed and sent to the Lords. Chesterfield tells us there was no disposition toward opposition among the members of the Upper House.<sup>9</sup> If the bill was passed as introduced, that is for a period of two months, the Lords probably suspended the rules and put the bill to its final passage on the day it was sent to them, for according to the provision of the Act, "Persons in prison may be detained for treason or suspicion of treason until the 29th of April 1744."<sup>10</sup>

For the moment party strife was practically forgotten. Every effort was made to anticipate the threatening invasion. Forts were strengthened: troop recalled from abroad; Kentish

1. *Parl. Hist.*, Vol. 13 H. 641-43
2. *Parl. Hist.*, Vol. 13 H. 650-66
3. *Parl. Hist.*, Vol. 13 H. 668
4. *Parl. Hist.*, Vol. 13 H. 670
5. *Parl. Hist.*, Vol. 13 H. 671
6. *Parl. Hist.*, Vol. 13 H. 672
7. *Parl. Hist.*, Vol. 13 H. 673

8. *Parl. Hist.*, Vol. 13 H. 673
9. *Parl. Hist.*, Vol. 13 H. 673.
10. *17 Geo. II. Cap. 6.*

militia placed under arms, and the Dutch States General requested to furnish 6,000 men.' In the meantime, the French fleet put to sea. But as had so fortunately happened in times past, the elements themselves came to England's rescue. Over-taken at sea by a violent storm the French Vessels were hopelessly scattered, while the English fleet promptly completed the work of destruction. "The fate of England at this junction," says Mahon, "hung suspended on the winds and the waves; had these not favored us the cause of the Sturats might, nay must, for a season have prevailed; but as with the Spanish Armada, 'flavit Deus et dissipatus'."

Relieved for the moment at least from all fear of invasion, Parliament suffered the Suspension Act to expire without being renewed, realizing that the crisis though severe, would be passed, they had suspended the Habeas Corpus Act for only two months. The danger being removed, they felt that so active a measure was no longer needed. While it is true that France had formally declared war against England on March 20, and England against France eleven days later, the scenes of war would for some time to come be far from Great Britain. An Act of rather an extraordinary character, however, was passed the following month, making it High Treason to hold correspondence with the Pretender's son.

We shall not attempt to trace England's varying fortune in the war on the continent. According to an eminent English Historian, "Robert Walpole lived just long enough to see the dangers he had kept aloof for twenty years, gathering around England. He died in March 1745, leaving England plunged deep in a continental war, with constantly increasing grants for military service and consequently increasing financial difficulties and on the eve of the most determined and dangerous effort which the exiled family ever made for the recovery of the crown."

After the English defeat at the Battle of Fontenoy, May 11, 1745, Charles Edward was encouraged to put forth one more last effort for the throne of his father. Disappointed, but not disheartened by the disastrous failure of his expedition the previous year, the Young Pretender landed on the soil of Scotland July 25th, with only seven followers with which to meet the army of George II. "A wilder or more hopeless enterprise," says Lecky, "Never convulsed a nation." No preparation had been made by the Jacobites, either in Scotland, or England. The bitter lessons of 1715 and 1722 were still fresh in their memories. Charles Edward was determined. Relying for help on the Highlanders which formed only one twelfth of the people of Scotland, the Pretender raised his standards at Glenforsaich.

1 Mahon, Vol 3 H. 160-61

2 Mahon, Vol 3, H. 174-76 H

3. Parl. Hist. Vol 13, H. 683

4. Parl. Hist. Vol 13, H. 688

5. Parl. Hist. Vol 13, H. 702 (April 27, 1745)

6 Bright, H. 997.

7 Bright, H. 999

8 Bright, H. 1000

9. Lecky Vol 1 H. 456



(4) Kings Address.

"The open and unnatural Rebellion which has broken out and is still continuing in Scotland, has obliged me to call you together sooner than I had intended and I shall say nothing to you at present, but what immediately relates to our security at home, reserving all other considerations to a further opportunity. So wicked and daring an attempt in favor of a Popish Pretender to my crown, ~~in favor of~~ headed by his eldest son, carried on by numbers of traitorous and desperate persons within the Kingdom and encouraged by my enemies abroad, requires the immediate advice and assistance of my Parliament to suppress and extinguish it."

Parl. Hist. Vol. 13. p. 1310-11

(5) Lords Address

"As we felt the utmost concern upon the breaking out of the unnatural rebellion which is still carried on in Scotland, — We want words to express the just indignation and abhorrence, which rests in our hearts, at so wicked, traitorous, and desperate, an attempt, in favor of a Popish Pretender to your crown, whose groundless claims we have uniformly rejected and whose principles and designs we do from the bottom of our hearts detest."

Parl. Hist. Vol. 18. p. 1321



August 19. The very boldness of the enterprise and the wonderful personality of its leader, aroused the enthusiastic support many who would otherwise have (at least remained) neutral. At first, the success of the enterprise seemed complete. When Parliament met October 17, 1745, Charles had defeated the English army at Preston Pans, was practically the master of Scotland and was hurriedly preparing to invade England itself. At first, strangely indifferent to the progress of the rebellion, the English people were soon brought to an active realization of their real dangers.<sup>2</sup>

Though I can find no positive evidence of the fact, I am quite sure the Habeas Corpus Act was suspended sometime during the last of October or at the latest, the early part of November. The rebellion had rapidly assumed so grave proportions that the king hastily convened Parliament in special session, on October 17. In an address at its opening, the king called attention to the necessity of active measures, not only to crush the rebellion, but to protect the person and government.<sup>3</sup> After a long and heated discussion in which many ridiculed the king's fright, both houses in separate addresses, condemned in unmeasured terms the actions of the Pretender and promised to pass such measures as the occasion demanded.<sup>4</sup>

According to the Statutes at Large, the first Act of this session was one suspending the Habeas Corpus Act. Its date however, is not given. The preamble reads, "Whereas a wicked and unnatural rebellion is begun, and now carried on, in that part of this kingdom called Scotland, by divers of his Majesty's subjects encouraged by his enemies abroad-----; for the better preservation of his Majesty's sacred person, and the securing the peace of the kingdom in a time of so much danger, against all traitorous attempts and conspiracies whatsoever: be it enacted" etc. Now Charles Edward crossed the border of England November 8, 1745, and marched rapidly as far south as Derby with 6,000 troops.<sup>5</sup> If the Suspension Act had not been passed till after this invasion, certainly the preamble which served to justify the passage of so extraordinary a measure, would have mentioned this fact. Again the statute, we are told, would expire April 19, 1746. There is no particular reason for designating that particular day of the month, unless it be that that fall on a day a given number of months after passage of the bill. If we count back six months, we arrive at October 19, 1745, two days after the special session had been called.

1. Luckey, Vol. II H. 456
2. Gardiner, H. 740.
3. Parl. Hist., Vol. 13. H. 1310-11
4. Parl. Hist., Vol. 13, H. 1326-27; 1362-63.
5. 19, Geo. II, Cap. 1.
6. Bright, H. 1003. 2g.

20. Geo. II Cap. I

"An Act for the further continuing an act ~~entitled~~  
made in last session of Parliament entitled  
An Act ~~for the~~ to empower his Majesty to secure --  
-- -- --"

"Whereas a wicked and traitorous rebellion -- -- --  
-- -- -- an act was passed in last session of  
Parliament entitled; An Act to empower his Majesty  
-- -- --, and the said act is thereby declared  
to continue until the nineteenth day of  
April, 1746 and whereas one other act passed  
~~on the~~ in the same session of Parliament  
entitled: An Act for continuing an Act  
of this session -- -- -- whereby it was enacted  
that the said first mentioned act, -- -- -- should  
continue and remain in full force and vigor  
from and after the said 19 day of April for  
and until 30 day of Nov, 1746. and no longer,  
and whereas it is necessary for public safety,  
that the said first recited act should further  
continue; Now for the better preservation of  
his Majesty's sacred person and for the  
security and peace of this Kingdom in  
this & particular conjuncture against all  
traitorous attempts and conspiracies to be made"  
etc.

Continued till 30th Feb. 1747

Six months <sup>has been</sup> ~~was~~ a favorite period for suspension. It is for these reasons that I say the Act passed probably October 19, 1745 suspended the Habeas Corpus for six months.

Never, perhaps, in all their attempts to regain the English crown, did the Sturats' fortune appear brighter than during the month following the battle at Preston Pans. Three days before the Suspension Act expired, however, the Pretender was hopelessly defeated at Culloden Moors, April 16, 1746. The unsettled condition of the country, the presence of a large number of rebels within its borders, and the fact that Charles Edward was still at large ready possibly to appear at any moment at the head of a new army, convinced Parliament that the Suspension Act ought to be continued. Accordingly a Continuance Act was passed, extending the Suspension till November 20, 1746.<sup>2</sup>

During the Summer of 1746 peace and order was gradually restored within the realm. Yet the fear that the rebellion might be renewed while England was still engaged in the war on the Continent, caused Parliament when they met, November 18, 1746<sup>3</sup> to extend the Continuance of the previous Spring. On the first day of their meeting, the Lords passed a bill Suspending for three months. In the House of Commons, John Cotton and Sydenham opposed the measure on the ground that since, "The rebellion being extinguished there was no occasion for such a violent stretch of law, as the suspension of the great and sacred bulwark of our liberties."<sup>4</sup> On the second reading there was a division, but the ministers we are told by an agreement with the Lords, carried the bill 134 to 35.<sup>5</sup> On the 20th the King affixed his signature to the act, continuing Suspension to February 20th 1747.<sup>6</sup> In February, there being no cause for its farther continuation, the Suspension was allowed to expire after a prolonged existence of 16 months, which with the exception of the period just following the French Revolution was the longest suspension in English History.

Sometime between the latter part of April 1746 and August 12<sup>6</sup>, when Parliament adjourned for the summer, an act was passed indemnifying Lieutenants, Justices of the Peace, Mayors and other officers who between the months of July and August 1745 and April 30, 1746 had aided in suppressing the rebellion. As in 1716, "certain of these offices," reads the statute, "had arrested persons on mere suspicion that they might disturb the public peace, or promote riot; had seized horses and arms and appropriated them to the public service, had entered houses

1. Bright. H. 1007.
2. 19 Geo. II Cap. 17.
3. Parl. Hist. Vol. 13 H. 1424.
4. Parl. Hist. Vol. 13 H. 1482.
5. 20 Geo. II Cap. 17.
6. Parl. Hist. Vol. 13. H. 1421.
7. Act. 19 Geo. II Cap. 20.



and quartered soldiers there and had done "divers acts which could not be justified by strict forms of law, and yet were necessary and so much for the service of the public, that they ought to be justified by act of Parliament and the persons by whom they were transacted ought to be indemnified." The probability is that while civil war was raging in Scotland and its rebels had penetrated far into England itself, ~~that~~ the above officials had found themselves forced from necessity to resort to measures not authorized by law.

This Act it will be noted was passed shortly after the Continuance Act of April 1746, and at least three months before its expiration <sup>on</sup> November 20, 1746, when it was renewed three months longer, (February 20, 1747.) Indemnity then must certainly have been passed more than six months before this final expiration of the Suspension of the Habeas Corpus. Furthermore, it indemnified only those acts which had been committed before April 30, eight months and a half previous to the date <sup>on</sup> the Suspension Act went out of force. In the statute, <sup>which</sup> not the slightest suggestion is made to Suspension of Habeas Corpus. For reasons which I shall give later, I ~~consider and~~ regard an Act of Indemnity, as I have already said, <sup>which has been said</sup> at most only supplementary to, not as Dicey ~~has suggested~~, essential to a Suspension Act. Both are extreme measures justified only on very extraordinary occasions. The fact that they are sometimes employed for the same general purpose, does not in the least prove that one is essential to the other. The Suspension Act entrusts to public officials for a limited time powers which public necessity can alone justify. So long as these officials, however, do not go beyond their customary powers and those authorized for the special occasion, no civil, or criminal prosecution can be begun against them. The Act of Indemnity, on the other hand, furnishes a protection to those persons who in the execution of their duty have stepped beyond their legal authority and ~~have~~ incurred civil, or criminal liability, even while acting in good faith and for the public safety. A Suspension Act then increases for a limited time an officer's authority while an Act of Indemnity virtually pardons him for having gone beyond that authority.

Thus ended the final attempt by the Stuarts to regain the English crown. Five serious trials had resulted in utter failure. Though Jacobite sympathy existed for years to come in the hearts of many an Scotch and even an Englishman, it would have been utter folly to put that sympathy into action.

1 Abon M. 38.

2 Abon M. 22.



These five periods of Jacobite activity were its occasion for the five Suspension of Habeas Corpus. In the presence of danger of a combined invasion and insurrection, persons ill disposed to the government were a source of constant apprehension. Their liberty was a source of constant apprehension. Their liberty was a source of constant apprehension. *Chapter VII* death of the king and in that event, quite likely the overthrow of the reigning house.

The opening months of the Seven Years War brought to England a long train of reverses. Minorca fell into the hands of the French; Braddock's army was hopelessly defeated. In June 1757, however, William Pitt assumed direction of foreign affairs thereby opening perhaps the most glorious, if not the most successful administration in English History. Infusing his own spirit into the very life of the nation, he immediately turned the tide of fortune. Abroad, victory took the place of defeat: at home, party contention disappeared in presence of a universal feeling of patriotism. During the fifth session of the eleventh Parliament which began sitting December 1, only one discussion arose to disturb its harmony.

The discussion arose out of an incident which had accrued sometime during the recess of Parliament, or just after the opening of the session. Under authority of a Force Act passed the preceeding Spring, a gentleman had been pressed and confined in the Savoy. Convinced that the detention was illegal, his friends in his behalf, demanded a writ of Habeas Corpus. The question at once arose; was the gentleman in the present case entitled to the writ. The judge of whom the writ was demanded that the Act 31 Chas. II Chap. 2, provided only for cases of imprisonment on criminal, or supposed criminal charges and that the statute displaced the Common Law provision concerning Habeas Corpus. Before the question was definitely settled the gentleman had secured his release on application to the Secretary of War. Though no hardship was suffered in the present case, the incident served to call public attention to what was then popularly believed to be a defect in the law on Habeas Corpus.<sup>2</sup> If instead of supplementing the Common Law provisions, the Habeas Corpus Act had displaced them, then the former was much to be preferred to the latter. In the light of such interpretation the Force Act might easily be made a dangerous machine for arbitrary oppression.

As the feeling of uneasiness concerning the application of the Habeas Corpus Act of 1679 rapidly took possession of the people, the question very naturally came up for discussion in Parliament. On February 21, 1758 the Commons gave their

1. *Mahon Vol 4. p. 124*

2. *Parl. Hist. Vol. 16. p. 871.*

*Mahon. Vol 4. p. 124.*

(a) The proposed law.

Whereas a writ of Habeas Corpus hath ~~at~~<sup>in</sup> all times been deemed to be the most effectual security of the subject against every kind of wrongful imprisonment or restraint and whereas any delay in the availing or returning of such writ may be attended with the most fatal consequences to the person under restraint and the reason of such delay the release entitled to be given may come too late, for such person to be discharged from his restraint, or to recover any benefit from such writ —

— And that upon oath, being made by such person so confined or restrained, or by any other in his or her behalf, of any actual imprisonment or restraint, together of their knowledge and belief of person so applying is not by virtue of any commitment or detention for criminal or supposed criminal matter, an Habeas Corpus directed to the person or persons confining, or restraining the party as aforesaid, shall be awarded and granted in the same manner and as is directed and under the same penalties as are provided by the said act. 3, Chap II Cap 2,

consent for the introduction of a "bill providing a more speedy remedy to the subject, <sup>the</sup> writ of Habeas Corpus." Under the direction of the new attorney general, Pratt, <sup>later known as</sup> Lord Camden, a bill was drafted and read before the House, March 8th. Having received several amendments it was passed April 21 and sent to the Lords.<sup>1a</sup>

After calling attention in the preamble to the fatal consequences which might attend the delay or refusal to issue the writ, the bill proposed that the several provisions of the Habeas Corpus Act of 1679 be extended to, "all cases where any person, not being committed or detained for any criminal, or supposed criminal matter, shall be confined, or restrained of his, or her liberty under any color or pretence whatsoever."<sup>2</sup> Upon oath by the prisoner, or by anyone in his, or her behalf, that there was a case of actual confinement, or restraint, but to the best of <sup>his</sup> knowledge and belief, it was not by virtue of any commitment, or detainer for criminal, or supposed criminal matter, a writ of Habeas Corpus must be awarded in the same manner and under the same penalties as provided in 31 Charles II, Cap. 2. Writ too, must issue during vacation as well as during term of court. The purpose of the bill was then to provide a statutory declaration of the vague uncertain Common Law guarantee to writs of Habeas Corpus not covered by the Act of 1679.<sup>in</sup>

We are told that <sup>in</sup> the House the above bill was opposed by Henry Fox, but supported by the two highest authorities in that body, Secretary Pitt and speaker ~~Ans~~low.<sup>3</sup> The latter endeavored to prove that the denial of the writ in the test case and the assertion that the Habeas Corpus had displaced the Common Law provisions were in direct opposition to the spirit of English institutions. Reverting to the famous 39th article of Magna Charta, they showed that an explicit declaration had been perverted by the Stuart jurists through their dangerous doctrine of State Law, which permitted the king and Council to make arrests without specifying any cause for the same.<sup>4</sup> The Petition of Right called forth by the arrest of the five members had repudiated this pernicious doctrine. It was for the purpose of defeating further attempts on the part of adherents to absolute prerogative of the king when evading the intent of the law by refusing return before the Alias and Plures had issued, that ~~the~~ Act 31 Charles II had been passed. This Statute, argued the supporters of the present bill, was not intended to abridge, or extend any previous right, but to give

1. Parl. Hist., Vol. 15 p. 871.

2. Parl. Hist. Vol 15 p. 872-3.

3. Mahon. Vol. 4 p. 1231

Enter debate in House Parl. Hist. Vol. 15 p. 874-97.

4. Parl. Hist. Vol 15 p. 876.

(a) Force Act.

" — Justices of the Peace and commissioners of the Land tax are empowered to meet and any, or one of them, to raise and <sup>levy</sup> ~~levy~~ all able bodied, idle and disorderly persons who cannot upon examination ~~from~~ from themselves to exercise and industriously follow some lawful trade or employment, ~~into his~~ or to have substance sufficient for their support and maintenance, to serve his Majesty as soldier under an express exemption of every one who has a vote for members of Parliament. "

Inserted in Parl. Hist Vol. 15 p. 887.



more speedy remedy for recovery of a subsisting and acknowledged right." Literally construed, it confined the remedy to criminal, or supposed criminal cases, but, "as a remedial act," (it) "ought to be construed liberally." It would be very strange that the act should afford relief to persons under confinement for criminal offenses, and at the same time deny the relief to such as should be confined without being charged with any offense at all."<sup>2</sup> It had been laid down as a fundamental maxim, "that acts of Parliament must be construed in such a manner that no innocent man may receive damage by a literal construction."<sup>2</sup> The Press Act by its very exceptions, they declared, confirmed the right of Habeas Corpus by implication. Although there should be no question as to the right of every subject to demand relief by writ of Habeas Corpus in all cases of illegal imprisonment, still since many men of ability and unquestioned integrity did entertain ~~such~~ doubts, it was the duty of Parliament to make a public declaration of the law.<sup>3</sup> For this purpose the present bill was urged.

Pretending to construe Pitts' remarks as an attack on the Force Act,<sup>4</sup> Henry Fox a leading opponent of the bill in the House, plunged into ancient history for arguments to support his position. He endeavored to prove that from earliest times it had been the duty of every subject to furnish military aid. If one were unable to provide money, or assist in the affairs of the government, the state was privileged to demand his personal service. He insisted that sufficient remedy was provided for cases of illegal imprisonment under color of the Force Act, but for reasons of public safety this remedy must be of a summary character, since if everyone pressed were privileged to an appeal to the King's Bench, the necessary delay might not infrequently defeat the purpose for which the Act had been passed, namely to secure soldiers immediately to go on some expedition, or anticipate a sudden and imminent danger from abroad. Turning from consideration of public interest, Fox attacked the bill on grounds of private wrong or inconvenience.<sup>4</sup> His objects from this direction, were weak in the extreme. He supposes the case of a wife who having been confined by her husband has obtained her release on writ of Habeas Corpus and then throws herself into the arms of a debaucher: again the case of a person on board a quarantined vessel, who after release might spread a dangerous disease. No respectable person, he believed, need fear the Force Act, since the recruiting officers for the most part

1. *Parl. Hist.*, Vol. 13 - p. 881

2. *Parl. Hist.*, Vol. 13 - p. 882.

3. *Parl. Hist.*, Vol. 13 - p. 884-85-

4. *Parl. Hist.*, Vol. 13 - p. 885-91.

(a) By act of Ed III it was provided "that no man should be distrained or urged against his will to go out of his country."

Parl. Hist Vol 15 pt. 893.

impressed men found only in brothels, gambling houses, etc., Like Machiaveli, he was of the opinion that it was a good policy to purge a community of such pernicious persons.

So far as I can learn, these were the only objections the bill encountered in the House. As could have been easily foreseen, Pitt and Onslow, lost little time in tearing apart this flimsy argument.<sup>2</sup> Fox's interpretation of history was shown to be false. Military service, contrary to the Force Act, had been from earliest times limited and definite. No man could be compelled against his will to serve outside the country. (Law of Ed. III).<sup>3</sup> The advisability of leaving questions of personal liberty to the summary disposition of a Justice of the Peace and that without a chance of appeal was properly held up to ridicule. The powers of the commissioners were limited, not discretionary and if they should exceed their authority by impressing persons excepted by the Act, such persons were without remedy for if they had not the benefit of appeal, the authors of their injustice would be sole judge in their own cause.<sup>4</sup> "In few words", the speaker concluded, "unless subjects restrained of their liberty, have the benefit of the Habeas Corpus Act all provisions of the laws in their favor are nugatory and void." "The Habeas Corpus Act should be extended to every commitment, or restraint of liberty whatever, but in those cases which they have properly excepted."<sup>5</sup>

On the whole the bill was little opposed in the House. Fox assumed his position more as a matter of custom, hampering his old political enemy, Pitt, than by reason of a sincere dislike entertained against any principle involved in the proposed measure. The House of Commons has always been found ready to pass any bill which had for its purpose a greater degree of personal liberty. The House of Lords, on the other hand, has ever manifested a marked spirit of conservatism. The Lords, with scarcely an exception have looked with disfavor on any measure which proposed a change in old established customs, believing that nothing but harm can result from attempt to improve on time honored institutions. We have already seen how the Upper House during the reign of Charles II had year after year, rejected Habeas Corpus bills sent them by the Commons, and how the Act of 1679 had succeeded only through means of a trick.<sup>5</sup> The present case was no exception to the general rule.

1. *Parl. Hist.*; Vol. 15 p. 888.

2. *Parl. Hist.*; Vol. 15 p. 891-97.

3. *Parl. Hist.*; Vol. 14 p. 894.

4. *Parl. Hist.*; Vol. 15 p. 896.

5. *Abbr.* p. 4

(a) Names of Judges, opinions when found and date,

Justice Nord. — —	Parl. Hist. Vol 15 H. 903-4.	} May 23.
" Milne	" " " 15 " 905-6.	
" Bathurst	" " " 15 " 907-8.	} May 26.
Mr Baron Adams.	" " " 15 " 908-9.	
" " Snyde	" " " 15 " 910-11.	
" " Legge	" " " 15 " 911-913.	} May 30.
Justice Ellis	" " " 15 " 913-914.	
" Drumman	" " " 15 " 914-15.	
Lord Chief Baron Parker	" " " 15 " 915-17.	
" " Justice Miller	" " " 15 " 917-19.	



After the second reading of the bill in the House of Lords on May 9th, 1768, Earl Hardwicke, in a lengthy speech, opened the debate. His reasons for opposing the measure, were much more cogent than those advanced by Fox. He endeavored to show that there was no occasion for passing such a bill, since the judges had always exercised discretion in cases of awarding writs of Habeas Corpus; not arbitrarily, but according to long established rules of law. The penalties proposed by the present bill were vague and indefinite. The provision which obliged judges to issue a writ whenever anyone should declare on oath that another was in custody, would place in the hands of many, he believed, a power to put a husband, a guardian, etc., at needless expense, in cases when in reality there existed no grievance. Finally he pronounced as dangerous, the provision, which the judge issuing the writ in vacation to make summary examination of the facts as set forth in the return and release, bail, or remand the prisoner according as justice required. The Earl, however, did see one defect in the Habeas Corpus Act as it stood; the lack of power on the part of the judge to enforce an immediate return to the writ during vacation. This defect, however, he failed to see provided for in the present bill. A spirited discussion followed Hardwick's request to propose to the judges three questions touching the law and practice of Habeas Corpus. Temple, <sup>the</sup> ~~his~~ opponent, yielding on the understanding that he too ~~should~~ <sup>might</sup> propose certain questions. By unanimous consent their questions were united in a list of ten.<sup>2</sup> At the instance of the Chief Justice, the third, which asked what effect would the proposed bill have in practice was stricken out.<sup>3</sup> May 25, 26 and 30th,<sup>a</sup> the judges rendered their opinion seriatim on the remaining nine questions. Though conflicting in certain particulars these opinions <sup>coming</sup> from the highest judicial authority in the kingdom carry much weight.

On the first and second questions, the judges in their several opinions declared that in their judgement, "In cases not within the Act 31 Charles II, writs of Habeas Corpus, by the law as it now stands, ought not to issue of course, but upon probate cause verified by affidavit," and the same, "may issue in the vacation by fiat from a judge of the court of King's Bench, returnable before himself."

The fifth, sixth, seventh and eighth questions related to practice of Habeas Corpus at Common Law and before the passage of 31 Charles II. The force of the answers made to these queries lay in the fact that the Common Law practice of

1. Parl. Hist., Vol. 15 - p. 897-99. (Speech as here long)

2. Parl. Hist., Vol. 15 - p. 902

3. Parl. Hist., Vol. 15 - p. 903.

4. For citation see opposite page

(a) Hilbert said judges ~~are~~ were not bound even now to issue writs during vacation, while Adams maintained that they were bound. Smyth on the other hand said judges were bound to issue in vacation upon passage of 31 Chas II

(b) Hilbert said such orders could not be enforced now. Smyth and Drummond, believed that obedience ~~was~~ could be required at next term of court by writ of attachment

(c) Smyth said that upon the term of the statute under consideration when a judge refused to grant a writ accordingly as he ought to grant it, he was liable to punishment in same manner as for any other breach of duty.

Habeas Corpus at Common Law and before the passage of 31 Charles II. The force of the answers made to these queries lay in the fact that the Common Law practices of Habeas Corpus still obtained in all cases not of a criminal nature. The object of determining what had been the practices in criminal procedure before the passage of the Habeas Corpus Act was largely for the purpose of knowing what was the status of Habeas Corpus in cases not criminal. With ~~little~~ <sup>few</sup> exceptions the judges stood agreed that Judges at Common Law had not been bound to issue writs on demand made in vacation; that return to such writs could not be enforced immediately; that no recourse at law could be had against a judge so long as he was acting within his judicial capacity; that before the time of the Habeas Corpus Act return to the writ could not be enforced till after Alias and Plures had been issued. Wilmut added that even now obedience could not be enforced to writs directed returnable immediately in case not within 31 Charles II.

On the ninth question which related to the ~~last~~ case, the the judges agreed that the provision of the Habeas Corpus Act did not extend to the case of a man compelled against his will to serve in time of peace, either in the land, or water service, nor to any case of imprisonment, except when the commitment ~~is~~ for criminal, or supposed criminal matter. Bathurst added, however, that the judges have in conformity to that statute extended the same relief to all cases of imprisonment.

The opinion of the judges on the last question is perhaps the most significant. I have already called attention to a serious defect in the Habeas Corpus Act as passed under Charles II; namely the power of the judges to question the truth of the facts as stated in the return to the writ. Strange as it may seem this defect apparently had not been detected by anyone till the present occasion. Noel, Bathurst, Legge ~~and~~ <sup>and</sup> Millis agreed that judges were not in all cases so bound by the return to the writ, that they could not discharge prisoners, if it should appear most manifestly to them by the clearest and undoubtable proof that such returns were false in fact and that the person so brought up was ~~retained~~ <sup>deprived</sup> of his liberty, by the most unwarrantable means and direct violation of law and justice. If the above opinion was correct, we see that the judges could question the return only when evidence of falsehood amounted almost to proof. Wilmut and Smythe denied the right of a judge to lay aside the facts as stated in the return except upon verdict of a jury. Adams, however, went farther and declared that, "In all cases whatsoever, when the

(a) "If a person who detains anyone in custody should think fit to make a return to the writ of Habeas Corpus, alleging matters sufficient to justify the party's restraint, yet false in fact, then there would be no means at least by the summary process of obtaining relief. An attempt was made in 1757 (sic) after an examination of the judges of the House of Lords on the extent and efficiency of Habeas Corpus at Common Law, to render the jurisdiction more remedial. It failed for the want of success."

Hallam ~~Vol.~~ pt. 477.



matter comes before the court singly upon the return made to the habeas Corpus, if that return contains a sufficient and justifiable cause of restraint, the judges must determine upon the cause as it then appears, and cannot hear any proof in contradiction to it, but are so bound by the facts set forth therein, that though they be false in fact, and the party in truth restrained of his liberty by the most unwarrantable means, and in direct violation of law and justice, they cannot discharge him." If Adams' view was the correct one, and he is supported by such later writers as Hallam,<sup>2</sup> certainly the Habeas Corpus Act contained a dangerous defect. In the light of later discussion, Adams was certainly right, if the strict interpretation of the Act were followed. Why this defect had not been detected before and why not seen by all the judges at this time is inexplicable.

After the above opinion had been rendered a motion was put to question the judges whether in case a person made affidavit of another arrest and that the arrest so far as he knew was not in virtue of any criminal, or supposed criminal matter, but should declare that he could give no material information relating thereto, would such affidavit be sufficient to cause the issuance of the writ of Habeas Corpus? The motion being lost, further discussion of the bill was deferred till the next Friday. On June 2, after a long debate on the motion for commitment, the Lords decided in the negative<sup>4</sup> and then passed a motion to reject the bill altogether.<sup>5</sup>

On June 2, Lords Temple, Talbot and Stanhope spoke for, and Lords Morton, Hardwicke and Mansfield against the bill. It was due more to Hardwicke's influence ~~more~~ than anyone else that the bill was lost.<sup>6</sup> He pointed out the inconsistency of the adherents of the bill in their anxiety to secure its passage.<sup>7</sup> In the first place they had asserted that the Habeas Corpus Act applied to all cases of restraint, but that the judges had unwarrantably narrowed the right. Being unable to maintain this position they conceded that the Act applied to criminal commitments only, but in all other cases the judges could not issue writs during vacation. It was to correct this defect, they said that the present bill was urged. Hardwicke then attacked the bill itself.<sup>8</sup> According to its provisions, he said, the writ was to issue on demand as a right of course. This he showed to be opposed in principle to the spirit of the Habeas Corpus Act, which required that a copy of the warrant of arrest, or an affidavit that such warrant had been

1. *Parl. Hist.*, Vol. 15 p. 909-10.
2. *Hallam*. p. 477.
3. *Parl. Hist.* Vol 15 p. 919.
4. *Parl. Hist.* Vol 15 p. 920
5. *Parl. Hist.* Vol. 15 p. 923.
6. *Parl. Hist.* Vol. 15 p. 926 footnote-
7. *Parl. Hist.* Vol. 15 p. 923-25 footnote.

refused, accompany the demand for the writ. The adherents of the bill had cited from the journals of both houses instances where the Lords and Commons had declared the writ could not be denied! Hardwicke, reviewing each instance cited, showed clearly that these statements must be received in the light of the special occasion which had called each forth and not construed as declarations of fundamental principles. Unfortunately only fragments of Hardwicke's speeches on the bill have been preserved. Contemporary writers, however, assure us that he demonstrated great ability in dealing with the subject and that the bill failed primarily because of his influence.<sup>2</sup>

Horace Walpole, writing to General Conway two days after the bill was defeated said, "The Habeas Corpus is finished but only for this year. Lord Temple threatened to renew it the next."<sup>3</sup> To prevent a division, Hardwicke had secured the passage of a motion authorizing the judges to draw up for the next session of Parliament a bill, extending the right of Habeas Corpus to all cases of imprisonment, to make provisions for enforcing obedience to writs issued during vacation, and to insert a clause declaring whether facts set forth in the return might be controverted by affidavit.<sup>4</sup> Whether the Earl was acting in good faith in this instance may be doubted. Probably he thought the present agitation would have subsided by the next session sufficient to permit a permanent defeat of the proposed measure. If such was his expectation, he was not disappointed. We are told that Temple had prepared a long flaming protest ready to be signed by thirty lords in case the bill was defeated. Hopes of obtaining its passage at next session, however, caused Temple to change his violent protest to a temperate "dissentient."<sup>5</sup>

Although there are evidences that a bill was actually drafted in accordance with Hardwicke's motion, it was not introduced at the next session of Parliament.<sup>6</sup> Public agitation of the question, as the Earl had no doubt foreseen, had rapidly subsided and the people became absorbed in the progress of the war on the continent. Though the defect in the practices of Habeas Corpus, had been clearly pointed out on this occasion, they seem to have been almost immediately dropped from the minds of not only the public, but of the leading jurists as well. Even Blackstone who wrote his "Commentaries" during the next decade, declared in the course of his discussion of the Habeas Corpus Act of Charles II that, "The remedy is now complete for removing the injury of unjust and illegal confinement."<sup>7</sup> In this case, as is almost the universal rule, defects in laws

1 *Parl. Hist* Vol 13 p. 922.

2 *Parl. Hist* Vol 14 p. 924 footnote -  
Muhlen. Vol. 4 p. 1238

3 *Parl. Hist* Vol 13 p. 923-26 footnote.

4 *Parl. Hist* Vol 15 p. 926.

5 *Matthew Bacon, Abridgements* Vol 4 p. 593.

## Substance of Temple's Dissent

1. Without some such remedy as that provided for, subjects must be oppressed, and deprived of their liberty without hope of redress.

2. That the conflicting opinion of the judges to the proposed question show only too plainly the state of confusion relative to the most important guarantee of Personal Liberty.

3. Need of some common understanding as to how much evidence should be required to justify or rather necessitate issuance of writ.

Parl. Hist. Vol 15 p. 919.20

(b) A copy of the bill prepared, but not introduced is given in Dodson's Life of Sir Michael Foster.

Bacon's Abridgement

Vol 4 p. 593.



are noticed and corrected only as individual cases arise to show them. We have seen that the denial of the writ of Habeas Corpus to a gentleman illegally imprisoned at the Savoy, had served to direct public attention to a defect in a law hitherto supposed to be complete. Failing to obtain a remedy at this term; largely I think, because the ministers and their adherents in Parliament disliked to yield to the wishes of the party in opposition this defect was soon forgotten and more than fifty years elapsed before another special case arose to recall public attention to its existence. The remedial act as finally passed, 56 George III, was almost identical with the bill Hardwicke had defeated in 1758.

*Chapter VIII* Jacobite hope of the restoration of the Stuart family to the throne of England, perished forever when Charles Edward fled utterly defeated from Culloden Moor on April 16, 1746. For more than fifty years the Jacobites had been a source of constant apprehension to the crown. At home and abroad, the Stuart adherents had anxiously awaited the moment when by taking advantage of some momentary embarrassment of the administration they might, through their combined efforts, reestablish their favorite house. Five times had they taken up arms to accomplish this end. Once at least in 1714-15 the lack of capable leaders and an unnecessary delay had alone rendered their efforts fruitless.

These five periods of Jacobite activity are marked by the first five periods of the Suspension of the Habeas Corpus. The reasons for suspension in each case were in the main identical. The dangers of an invasion from abroad, acting in conjunction with an uprising within, demanded in the name of the public safety that extraordinary powers be given the ministers to apprehend certain suspected persons. The causes which led to, and justified, these early suspensions passed away forever after the Jacobite defeat in 1745. Still there remains three periods yet to be discussed. For these later acts of suspension we shall be obliged to find other causes.

The period to which we now direct our attention is that of the American Revolution. If we were to adhere strictly to the title of this paper, we would perhaps omit this period altogether, since the Act of Suspension at this time, ostensibly at least, applied not to England but to the High-seas and the American Colonies. Since, however, the act was considered to materially affect personal liberty and since arrests were actually made within the kingdom under the provisions of the statute, a little space may well be devoted to its consideration.

*Mahr. Vol 4 p. 126.*



a. Lord North was Chancellor of Exchequer.  
Parl. Hist. Vol 19

b. Drummey said "The punishment is inflicted in the  
first instance, on the grounds of mere suspicion.  
A man may be suspected, any man may be  
suspected, but his guilt or innocence are  
certainly out of the question. No inquiry  
whatsoever is to be made into either, so long as  
the present Bill continues in force.  
Parl. Hist. Vol. 19 H. 7.

Shortly after the Christmas vacation of Parliament, Lord North, the chief minister in a speech before the House on February 6, 1777, said that since the beginning of the war in America, several persons had been apprehended who had actually committed High Treason and there were several others guilty of the same offense who might be taken, but who for want of evidence could not be kept in gaol. Admitting that there was no danger of invasion, or insurrection, he still thought that the present occasion would justify a Suspension of the Habeas Corpus, since, "It was not possible at present officially to apprehend the most suspected person." The laws furthermore provided that rebels taken in America, or pirates taken on the High Seas could be legally confined only in the common gaol. "It was necessary for the crown to have a power of confining them like other prisoners of war." On the following day, Lord Germaine presented, "a bill to empower his majesty to secure and detain persons charged with, or suspected of the crime of High Treason committed in North America or on the High Seas, or the crime of piracy." The bill provided that persons apprehended on the above charges on suspicions should be committed to common gaols or any other place directed by the king under the sign manual. To such persons the right of bail, or mainprize should be denied; nor should they be brought up for trial except by order of the Privy Council."

Opposition to the bill, as everyone acquainted with the history would suppose, came from the Anti-court party. The king with the aid of his prime minister, North, who was a mere tool in his hand, was steadily extending the royal prerogative by directing legislation, either through hopes of reward, or fear of the king's displeasure. While the court party was decidedly in the preponderance, the smaller party was no less active and spirited, if their speeches may be taken as an index to their spirit and activity.

Fox and his party who had steadily opposed the war in America, attacked the measure. Questioning the motives of the minister who had urged the bill, Johnston and Dunning declared that it was in reality directed against persons who had never seen America, that under its protection, private and political grudges would be satisfied. Fox in his characteristic way said the present policy resembled the first scene in the fifth act of a tragedy. "The plan had been long visible --- it was nothing less <sup>than</sup> robbing America of her franchises; as a previous step to the introduction of the same system of govern-

1. *Parl. Hist.*, Vol. 19, p. 4.
2. *Parl. Hist.*, Vol. 19, p. 4-5.
3. *May*, Vol. 1, p. 44-52.
4. *Parl. Hist.*, Vol. 19, p. 5-13.

(a) London Petition

That the petitioners have seen a bill depending in the House, to empower her Majesty — and that, if the said bill should pass into a law, the petitioners are apprehensive it will create the greatest uneasiness in the minds of many of her Majesty's good subjects and tend to excite the most alarming disturbances, all persons indiscriminately being liable upon the ground of suspicion alone, without any oath made, and without concerning the parties or hearing what they can allege in their own justification — — — and that the Habeas Corpus which is the greatest security of the liberties of the people will be suspended, — from bills involving of resentments and various other inducements, there may be persons confiscated who may be ~~persons~~ tempted to exercise that power in its utmost latitude and extent, — — — the petitioners therefore earnestly beseech her Majesty the House that the said bill may not pass into law. etc.

Parl. Hist Vol 19 p. 20-21

ment into this country." Suspicion, he believed, would be made the excuse for most flagrant abuses. Johnston urged that ~~the~~ Americans had the spirit of Britons; that they might be led, but he was satisfied they would never submit to be driven, that consequently the bill would only serve to widen the breach between America and the mother country.<sup>2</sup> The motion for a second reading, however, passed 195-45.<sup>3</sup>

On the 13th the bill went before the Committee of the Whole. The opponents of the measure, dispairing no doubt of their power to defeat the bill altogether, introduced several amendments for the purpose of limiting the efficiency of the proposed law. Fielde urged that a difference be made between persons actually taken in arms and persons who had merely submitted to the government under which they lived, even though that government be of doubtful authority.<sup>4</sup> To this motion Lord North yielded his assent, but so far as I can determine the motion was never put. At any event that distinction was not embodied within the bill. Demster moved for an amendment limiting the purpose of the bill "for the better protection of the inhabitants of Great Britain."<sup>5</sup> North argued that this limitation was unnecessary, since the people of Great Britain would not be affected directly by the bill. The Attorney General, however, admitted that according to the bill as it then stood, arrests might be made within the country under its authority.<sup>6</sup> But instead of regarding this as a defect, he was inclined to favor that application of the measure. It would be strange, he thought, if persons furnishing the enemy with information could be arrested when committing that offense in America and not when committing the same offense within the kingdom. "If there were men in the kingdom answering any such description, that was one very principal motive, in his opinion, for passing the bill." His motion, however, was lost 125 to 25.<sup>7</sup>

When the House met the next day, a petition was presented from the citizens of London, requesting that the bill under consideration be not passed.<sup>8</sup> Like the members of the Anti-court party in Parliament, they apprehended that the power conferred by the bill would be so far abused, as to place at the mercy of the minister all those against whom the members of the administration have any private, or political grudge. When we recall how the ministers within the past decade had so often stretched and distorted the laws and customs of the country for the purpose of extending unduly the powers of the crown, we can easily see that their fears were no wholly unfounded; even though they were certainly much magnified.

1. *Parl. Hist.*, Vol. 19, p. 11.

*Parl. Hist.*, Vol. 19, p. 20.

2. *Parl. Hist.*, Vol. 19, p. 15.

3. *Parl. Hist.*, Vol. 19, p. 15.

4. *Parl. Hist.*, Vol. 19, p. 16.

5. *Parl. Hist.*, Vol. 19, p. 17.

6. *Parl. Hist.*, Vol. 19, p. 19-20.



We are told, however, that aside from the citizens of London, there was practically no opposition to the king's war policy from the people at large. The feeling was almost unanimous that the Americans must ~~early~~ be brought back to absolute submission.

The London petition was a signal for a renewed attack by Fox and his party. Powys moved the amendment that, "No person shall be secured --- by virtue of this act for High Treason, or suspicion of High Treason, unless they persons shall be charged to have been locally resident in his Majesty's said colonies, or plantations in America at the time he shall be charged with, or suspected of committing High Treason." It was however, pointed out that a man who had never been out of England might still be the author of an act of treason in America. The suggested proviso while not affording any protection to an innocent man, might easily be made ~~the~~ screen a guilty person. The motion failed by a vote of 49 to 14.

On February 17th, 1777, the bill was taken up for a final reading. Though knowing ~~all~~ well that their efforts were vain, the opposition could not resist the opportunity of firing a few shots at their political enemies. Fox, Dunning, James Luttrell and Wilkes loudly charged the ministers with the most heinous motives for urging the present measure, and denounced the war policy in strongest terms. Resting in full assurance of success, through their overwhelming majority, the party of the administration listened in disdainful silence to these ineffective attacks. Pretending to see a fatal inconsistency between the preamble of the bill and the enacting clause, Dunning offered the following amendment, "Provided also and be it hereby declared that nothing herein contained is intended, or shall be construed to extend to any other prisoner, than such as have been in some one of the colonies before mentioned, or on the High Seas, at the time of the offense wherein he shall be charged." Cornwall while denying that the provisions were inconsistent with themselves, said he would give his consent to the forgoing proviso with the following amendments: In place of the clause, "in some, or one of the colonies, or on the High Seas," he would substitute the words, "out of the realm" and add "or of which they shall be suspected." Wilkes followed with a better diatribe against the ministers at whose hands he had already suffered. This attack called forth a reply from Rigby who declared that the present bill was more necessary than in 1745, because the rebellion was then open, but now the rebels skulk around awaiting their opportunity and opposing every measure brought forward by the ministers. Dunning's motion as amended by Cornwall seems to have met with little opposition.

1. *Parl. Hist.*, Vol. 19, p. 21.
2. *Parl. Hist.*, Vol. 19, p. 22-3
3. *Parl. Hist.*, Vol. 19, p. 24
4. *Parl. Hist.*, Vol. 19, p. 24-51.

6. *Parl. Hist.*, Vol. 19, p. 26
7. *Parl. Hist.*, Vol. 19, p. 26-7
8. *Parl. Hist.*, Vol. 19, p. 34.

In fact North even urged the friends of the bill to vote for the measure.<sup>1</sup> The amended motion then passed without a division. The final vote was next taken on the bill itself resulting, 112 in the affirmative to 33 in the negative.<sup>2</sup>

The bill encountered little opposition in the Upper House. The Lords were almost unanimous in their support of the king's war policy. Coventry, however, did ask what was the nature and extent of suspicion required.<sup>3</sup> The Lord Chancellor replied, that law and justice demanded that the prisoner be released, if proper facts of his innocence be authenticated before the magistrate.<sup>4</sup> But in his opinion the magistrate had a right to inquire into and determine upon the degree of credibility to which the charge or ground of suspicion may be entitled. On February 24th, the bill received the Lords assent. Abington, however, offered a protest condemning the principle involved, charging the ministers with corrupt motives and denouncing the entire war policy of the administration. The bill was made to continue ~~in force~~ till January 1, 1778.<sup>5</sup>

As we have already seen, the bill as originally drafted by the Attorney General was intended to apply only to those person who had been charged with, or suspected of, the crime of High Treason in the American Colonies, or of Piracy on the High Seas. Yet by Thurlow's own admission, persons who had never seen America, or who had never been on the High Seas might be arrested, without the benefit of Habeas Corpus, if it could be shown that the act of which the person in question was the author, had been the effect of treason in America.<sup>6</sup> If this interpretation had been given, the bill to that extent would have amounted to a limited suspension of the Habeas Corpus in the kingdom regardless of the purport of the preamble. By the adoption of Dunning's amendment, however, this interpretation was rendered impossible. Still arrest could be made in the kingdom under the provisions of the act, if it could be shown that the suspected had been in America, or on the High Seas at the time he was suspected to have committed the offense. Thus in fact it was a very limited Suspension of the Habeas Corpus in England itself.

Shortly after Parliament had convened for the fall session the Attorney General, the author, of the Suspension Act called attention of the House to the fact that the above statute would expire of its own force in January and urged that another bill for its continuation be introduced.<sup>7</sup> Admitting that there were circumstances which sometimes justify a suspension of

1. *Parl. Hist.*, Vol. 19, p. 43;

2. " " " 19. " 51.

3. " " " 19 " 52

4. " " " 19 " 52

5. 17 *Geo. III. Cap. 9.*

*Makn.*, Vol. 6 p. 140-42.

6. *Abm. H.* 59

7. *Parl. Hist.*, Vol 19 p. 461



the Habeas Corpus. Baker said he would like to know what evils had the present act prevented in the past nine months. If none could be shown, he for one would oppose any farther suspension.' He was later answered by Ellis. The effectiveness of the act had been considerably limited by a cartel which since the bill's passage, had been established in America for the mutual exchange of prisoners; with the result that persons detained in America on suspicion might and very likely did secure their release in the mutual exchange of prisoners, while persons detained in the kingdom on the same charge could not obtain their liberty at all. Thinking that this results in an arbitrary confiction of laws, Burke urged that out of consistency, either the cartel or the Act of Suspension should be abolished.<sup>2</sup> He went on to say that he knew of many persons being detained in America and in the kingdom under the authority of the Act of Suspension, but had not heard of one of one being brought to trial.<sup>3</sup> On the day following, Cooper introduced a bill in accordance with the Attorney General's suggestion. Baker arguing that the inquiry of the House should be co-extensive with the power granted by the crown, moved that an address be presented the king asking for a "correct return and the full description of all prisoners with an account of the prisoners in which they are confined in America as well as Great Britain, together with copies of their several commitments and the bail, etc., offered for their enlargement, and all other proceedings of his Majesty's Privy Council, in consequence of the power vested in them by the late bill for the Suspension of the Habeas Corpus Act, to be laid before the House."<sup>4</sup> The reason for the motion he said was his belief that no native of Great Britain had been arrested in the kingdom under the authority of the present act. If such belief were true there was no occasion for granting such extraordinary power.<sup>5</sup> Ellis argued that the measure was intended, not so much as a cure, as a preventive of crime; that the law had discouraged persons for treason who might otherwise have been guilty.<sup>6</sup> The farther discussion in the House and the king's return concerning the prisoners held in America and Great Britain are not accessible to the present writer. The bill extending Suspension one year longer (January 1, 1779) was passed ~~was passed~~ by the House within a fortnight.

On December 8th, the Lords took up the House bill. Dukes Richmond and Manchester spoke warmly against the bill, making

1. *Parl. Hist.* Vol 19 H. 462.
2. " " " 19 H. 463.
3. " " " 19 " 464.
4. " " " 19 " 464.
5. " " " 19 " 463-66
6. " " " 19 " 463-66

(a) Mr Platt. a merchant of Georgia, had helped  
unload a vessel containing among other  
things horses sent from England. ~~Subsequently~~ <sup>interestingly</sup>  
himself from mere inclination to serve the owner  
soon afterwards, on a merchant's trip to Jamaica,  
offended one of company, was apprehended and  
imprisoned without cognizance of the  
Suspension of Habeas Corpus. Sent on ship  
to England. Sir John Fielding recommended  
him without permitting him to be confronted  
by his own accusers. Trial denied  
Had then been two years in prison.

Duke of Richmond's account.

Platt was a committed man in Georgia  
and became quite active in rebellion  
He contributed in seizing his Majesty's  
vessel. Phillips. From motives of pure delicacy  
judges had thought proper to defer trial.

Duke of Sandwich, account

Parl. Hist Vol 19. pt. 561-62



much out of the Platt case.<sup>1</sup> The Chancellor, however, maintained that the act was the only ~~same~~ policy to follow. He urged that it was necessary that some punishment be inflicted upon persons taken in arms against the government, that it would not be expedient to discharge them on the one hand, or on the other to put them to death, since the enemy holding prisoners too, must be expected to retaliate by inflicting the same extreme punishment.<sup>2</sup> The bill was passed and at once became a law.<sup>3</sup>

So far as I can determine, the question of continuing the suspension after the expiration of the second act, never came up for consideration. The probable reasons are that the Suspension had not proved so successful as it was at first hoped; that it had been largely ineffective in America by the existence of the cartel; that while there was little real occasion for it in England; at the same time it continued as a source of constant irritation to the people who felt that in some way their personal liberties were unnecessarily endangered.

The reasons for Suspension of the Habeas Corpus at this period are radically different from those which had led to the first five periods of Suspension. There was not the slightest danger of an invasion and as little likelihood of an insurrection at home. The act was simply a war measure, one among many extreme laws passed at the time against the Colonists to reduce them to submission. Whether the policy pursued by the government against the government was prudent, or not, is wholly outside the scope of this paper. But the war once under way, Parliament certainly had the right and I believe was justified in passing the measure for the purpose of aiding the government in detaining those persons against whom no positive proof of treasonable design lay, but who were recognized as conniving against the nation in the rebel's behalf.

- 1, Parl. Hist. V.H. 19 H. 360-62,
- 2, " " " 19 " 361
3. 18 Geo. III Cap. I

Certain philosophers have advanced a theory which they call Compensation. The historian whose material is facts and whose speculations seldom venture beyond the causes and effects of these facts usually, passes with a smile theory, such abstractions. Still when discussing the status of personal liberty in England with that in France during the decade following the fall of the Bastille, he finds such a theory very convenient. Never had Englishmen enjoyed in so full a degree personal liberty, freedom of speech, thought and action, as they had enjoyed during the thirty years preceeding the outbreak of the French Revolution. Within the next ten years, however, those cherished rights suffered greater violations than at any time under the Stuarts. Burke sounded the keynote of this sudden retreat when he wrote his "Reflections."

Strangely enough England was so peculiarly circumstanced at the moment that the ideas emanating from France produced upon her a most profound impression. Political parties were in a state of utter decay: the principles on which they had been founded had long since become absolute. The sense of stability which often results from closely constituted and well defined parties was sadly lacking. Yet the very want created its own remedy. As the French Republicans quickly went from extreme to extreme, the more conservative from the two old parties united to form a powerful New Tory Party, whose avowed object was the preservation of the old constitution in its entirety. In their anxiety to attain this end, however, they withdrew temporarily many of its most important guarantees of liberty. Pitt and his party were not consciously arbitrary. Still because of their fear that the French Revolution might spread to the English shores, they were guilty of many an arbitrary and tyrannical act. Only a few persons, it would seem, notably Sheridan, Fox and Grey in the House, and Lauderdale and Holland among the Lords saw the folly of this fear; saw that the very difference in the basic principles of the two countries rendered a comparison between them useless; that England was in more danger from the arbitrary measures of the frightened administration than from any Revolutionary tendency of the English people. Though speaking on every occasion, they exercised little, or no influence beyond that of delay since the followers of this New Whig party were but a mere handful of men against the hosts of their ~~then~~ political opponents.

The French Revolutionary ideas did find a welcome among certain classes of English laborers.<sup>3</sup> These were the victims of the severe industrial crisis following the inception of factories in England. Wages had suddenly declined, while the

1. May Vol 2. pp. 162 - 173.

Bright. pp. 1161.

2. May Vol. 167-8

3. Bright. pp. 1161-2.

Journal and Correspondence of Lord Auckland.

Vol 2. Pl. 475.

In letter by Lord Henry Spencer to Lord Auckland  
Dec. 18. 1792.

"You will have heard that a bill was to be brought in to suspend the Habeas Corpus Act with respect to foreigners, I now understood that it is meant to extend the suspension to all persons indiscriminately whose conduct shall appear suspicious."

(b) "These trials says Lord Cockburn, sank deep not merely into the popular mind, but into the minds of all men who thought. It was by these proceedings, more than by any other wrong, that the spirit of discontent justified itself throughout the rest of the age."

Man. Vol. 2. Pl. 300

the price of food products had as suddenly advanced <sup>occasionally</sup> ~~as a re-~~  
~~sult of~~ crop failures and changes in industry; they were scarcely  
 able to supply themselves with the necessities of life.  
 Their suffering was indeed severe. As has so often happened,  
 these unfortunates believed they saw the causes for this suf-  
 fering in the government. The ideas of "rights of man," univer-  
 sal suffrage, sovereignty of the people, possessed for them a  
 charm. As in France, societies were formed, or old ones revived  
 for the purpose of spreading democratic ideas and doctrines.  
 Chief among these societies were the London Correspondence Soc-  
 iety and the Society for Constitutional Information. French  
 customs and French phraseology were aped to a ridiculous degree.  
 Although numbering only a few thousand and recruited and dir-  
 ected with a few notable exceptions like Horn Tooke and Priest-  
 ly, by illiterate and unexperienced persons, the very boldness  
 and extravagance of their language aroused in England appre-  
 hensions out of all proportions to the real efficiency of these  
 societies. At another time, they would have been in all prob-  
 ability treated with contempt, if not ridicule.

Repression measures against these societies were taken as  
 early as the Spring of 1792. On May 21st of that year, the king  
 issued a proclamation, warning the nation against seditious  
 writings, commanding the magistrates to discover their authors  
 and printers and urging the sheriffs to suppress all tumults.<sup>2</sup>  
 We are told that a very considerable attempt was made at this  
 time to obtain a Suspension of the Habeas Corpus against the  
 many foreigners who had secretly come to England.<sup>3</sup> The matter  
 however, was not taken up in Parliament. Other proclamations  
 followed. But the administration during the next two years  
 confined itself to prosecutions for libel and sedition rather  
 than the passage of extraordinary laws. The prosecutions were  
 conducted with much spirit and the sentences imposed were se-  
 vere in the extreme. Contrary to expectations this policy  
 served only to aggravate the activity of the societies.<sup>4</sup> A  
 systematic distribution of Revolutionary literature was under-  
 taken, while the leaders grew more and more violent in their language.

After the general meeting of the London Correspondence  
 Society at Chalk Farm, April 14, 1794, when a call was issued  
 for a convention to be held at some central place in England,  
 within six weeks, for purposes, but vaguely stated, the ministers  
 believing that the example of the Jacobite Club in France was  
 about to be repeated, ordered the seizure of all papers and cor-  
 respondence belonging to the society, and sent some dozen of  
 its members to the Tower to await trial for treason.<sup>5</sup> On May 12  
 the king in a special message to both Houses, asserted that a  
 "certain society was preparing a general convention of the  
 People in contempt and defiance of the authority of Parliament a  
 ----- and directly tending to the introduction of that system  
 of anarchy and confusion which has fatally prevailed in France."  
 He ended by urging Parliament to pass adequate legislation to

1 May. Vol 2 pt. 284. 13 Journal and Correspondence of Lord Auckland  
 2. Bright. H. 1163. and Parl. Hist. Vol. 24. H. 1496

4. May. Vol. 2 pt. 287-501  
 5. Parl. Hist. Vol 21 pt. 489-490  
 6. Hammond's Charles James Fox



1a) Statement and Resolution -

April 16. 1793.

"As to our petition to the crown we believe it is  
topical in its consequence."

Parl. Hist. Vol 31. p. 477

Jan. 1794.

"Resolved that we see with regret, but we see  
without fear that the period is fast approaching,  
when the liberties of Britons must defend, not  
upon reason, to which they have long appealed, nor  
to their power to express it - but in their power  
and undaunted resolution to oppose  
tyranny by the same means by which it is  
expressed."

Parl. Hist. Vol 31. p. 479.

Mar. 27. 1794

"The critical moment is arrived and Britons  
must either assert with zeal and firmness  
their ~~own~~ claims to liberty, or yield without  
resistance to the claims of mutual usurpation  
is for us for them,

If we are to be beaten down with threats  
persecution and illegal sentences, we are  
unworthy and are incapable of liberty."

Parl. Hist. Vol 31 p. 484

to meet the impending danger.' The following day the papers and correspondence of the London Society were laid before Parliament and on the 15th referred by that body to a secret committee of 21 chosen by ballot.<sup>3</sup>

On May 16, 1794 the Secret Committee in an elaborate report showed the working and objects of the London Society as set forth in its correspondence.<sup>4</sup> It must be confessed that the society certainly had something more in mind than mere Parliamentary reform, or even universal suffrage. Their resolution abounded in vague threats and impassionate appeals. A resolution was particularly note-worthy adopted at a general meeting held at the Globe Tavern January 20, 1794. "Resolved that during the ensuing session of Parliament the general Committee meet daily to watch proceedings. Upon the first introduction of any bill imical to the liberties of the people, such as landing foreign troops in Great Britain, or introduction of a bill for Suspending the Habeas Corpus, for proclaiming martial law, etc., the General Committee issue a proclamation to the delegates of each division, to the secretary of the different societies to etc., forthwith to call a general convention of the people to be held at such time and place as shall be mentioned in the summons, for the purpose of taking such measures under consideration." To be sure nothing directly Revolutionary could be proved by this resolution: but when read with others, condemning in violent terms the ministers and judges, lauding the efforts of the French Assembly and when it was known that arms were being actually collected, the House was frightened into believing that England herself was on the verge of blood-shed and violence.<sup>5</sup> But granting that the society were contemplating violence and such an inference could easily be drawn, the mere handful of its members and the almost unanimous condemnation of its principles by the people at large rendered all chances of success nihil. These persons should have been closely watched, it is true, but nothing unlawful had yet been attempted and should such an attempt be made the laws on sedition and treason would certainly have been adequate for the occasion.

Fright, however, influenced the better judgement of the ministers. Scarcely was the report finished when Pitt rose and after declaring the necessity of arming the executive with extraordinary power, asked leave to introduce a bill for the Suspension of the Habeas Corpus.<sup>6</sup> Sheridan and Fox who alone seemed to have grasped the true situation,<sup>7</sup> endeavored in vain to show that nothing unconstitutional had as yet been attempted, that the <sup>small</sup> number of the societies rendered any such

1. *Parl. Hist.*, Vol 31 p. 471
2. " " " 31 " 471
3. " " " 31 " 474
4. " " " 31 " 475-97.
5. " " " 31 " 484
6. " " " 31 " 497-505.
7. " " " 31 " 497-521 (debate)

(a). 1. Reading, 197 for 33 again;

2 " 186 " 29 "

Report of Com of Whols 13-4 " 23 "

(b) "Since the Revolution the Habeas Corpus Act  
has been no less than ~~was~~ <sup>is</sup> ~~times~~ <sup>times</sup> suspended  
Dunder.

Parl. Med. Vol. 31 pt. 539.

(C) The committee was composed of the Lord Chancellor  
Lord Privy Seal. Duke of Leeds, and Portland,  
Earl of Hardwicke, Carlisle, Carnarvon, Chatham  
and Mansfield.

Paul. Heat Vol. 31 pp. 573.

attempt useless and that ~~the existing laws were adequate for the occasion~~ efficiency of the existing laws. He denied the assertion made by Pitt and the Attorney General that precedent favored the present bill for in the former suspensions, the American Revolution alone excepted, <sup>they were an</sup> attempted invasion acting in harmony with a powerful insurrection at home. Nevertheless Pitt's motion carried 201 to 39. Anticipating haste, Grey moved that the bill be deferred a fortnight, but his motion was lost, 201 to 39. The gallery was then cleared and the bill was read the first and second times and passed upon by the Committee of the whole.<sup>a</sup> The House must have been convinced that the immediate passage of the bill was necessary, for it continued in session till 3:30 in the morning, before adjourning to the following afternoon. The last vote showed 146 for and 28 against the measure.<sup>2</sup>

When the House again convened,<sup>3</sup> the passage of the bill was certain, but the opposition offered a vigorous protest. Grey, Fox and Sheridan endeavored to throw the ministers in a bad light by showing that they too had once pressed for just such measures as the London Society were now laboring to obtain; they charged the ministers with indecent haste and with ulterior motives. Dundas on the side of the administration argued that the dangers which threatened the country were more serious than at any other period of Suspension, since formerly the attempt had been merely to change the crown from one head to another but now it was the change of the constitution itself. <sup>He was answered -</sup> Sheridan in reply said that he considered that it was just such measures as the present <sup>which was argued</sup> ~~present~~ <sup>never</sup> stirred by conspiracy.<sup>4</sup> Fox observed that persecution had been successful in extirpating opposition to any system either religious, or civil. This measure, he believed would encourage the French Convention, that "Barrere would hold up this measure and say, that it was obvious there must be a formidable party in England in favor of the French doctrines, when one of more beautiful branches of our constitution was to be lopped from the tree." In spite of the determined, we might say stubborn opposition of the half dozen Whigs, the bill at length passed the House by a vote 146 to 28, three o'clock Sunday morning, May 18.

On the 19th the bill and reports were laid before the Upper House when they were at once referred to another Secret Committee of Nine.<sup>5</sup> Three days later the Committee reported that they were satisfied that a traitorous conspiracy existed and recommended the immediate passage of the House bill.<sup>6</sup> Lord Grenville was enthusiastic in its defense.

1. Parl. Hist. Vol. 31 pt. 321.

2. " " " 31 " 323.

3. " " " 31 " 325-73

4. " " " 31 " 339-42

5. " " " 31 " 543.

6. " " " 31 " 563

7. " " " 31 " 573

8. " " " 31 " 574



a. The Preamble.

Whereas a traitorous and detestable conspiracy has been found for subverting the existing laws and constitution and for introducing the system of anarchy and confusion which has so fatally prevailed in France

the act was extended to Scotland by suspending an act of 1701 guaranteeing to Scotland the privileges of Statute in Regem.

As customary the privileges of Parliament was excepted.

34 Geo. III. Cap. 54.

*But* Stanhope and Lauderdale, representatives of the Whig party in the Upper House, ~~however~~ made vigorous speeches against the bill, using for the most part the same objections <sup>then</sup> urged by Fox, Sheridan and Grey in the Lower House. Excepting Grenville and the Attorney General, the Tories confident of success said little. That they were very much in earnest is evinced by the fact that the rules were suspended and the bill ~~passed~~ <sup>pushed</sup> to its final passage ~~on the day of its introduction and passed by a vote of 92 to 7.~~ <sup>by a vote of 92 to 7 on the same day that it was introduced</sup> The bill received the king's signature the following day thereby suspending the Habeas Corpus Act till February 1, 1795.

Parliament having vouched for the existence of a traitorous conspiracy ~~was~~ in duty bound to discover its character, nature and extent, and proceed to crush it at once. The Secret Committee in the Commons on June 6, and that of the Lords the following day, laid before their respective houses reports, carefully explaining the organization, aims and objects of the Revolutionary Societies. The Societies were loudly condemned in and out of Parliament. Prosecutions for libel were conducted with vigor, but in spite of intense public feeling against these so called reformers, the government failed time after time to obtain judgement. In the late Summer and early Autumn, the state trial took on a new and more serious aspect. Robert Watt and David Downie were tried in Scotland for High Treason and sentenced to death. The former suffered the penalty, the latter was pardoned.

According to the terms of the Suspension Act persons arrested on suspicion of treason might be brought to trial at any time ~~the~~ during the continuation of the act only on order by the Privy Council. The commission for the trial of the leaders in the supposed conspiracy was granted in October. Indictments for High Treason were brought in by the Grand Jury against Thomas Hardy, John Horne, Horne Tooke, Thelwold and nine other members of the two societies previously mentioned. The accused stood in a very critical position. Their connection with the societies were unquestioned and Parliament had just asserted that a conspiracy existed. In the famous trial which followed, the brightest jurists of England took the leading part. Thomas Hardy, the secretary of the London Correspondence Society was first tried. If this conspiracy really existed, Hardy was certainly guilty. The government in its anxiety to secure conviction, spared neither time or money. But it appeared from the testimony that, although many bold and rash statements and resolutions had been adopted, no overt act of treason had been committed. Hardy was accordingly acquitted. Tooke and Thelwold being next brought to trial, but with no better success, the rest were discharged.

1. *Parl. Hist.* Vol 31 p. 603
2. *34 Geo. III. Cap.* 54
3. *May.* Vol 2. p. 306
4. *Parl. Hist.* Vol 31 p. 688-889
5. *Parl. Hist.* Vol 31 p. 889-903

6. *May.* Vol 2. p. 304-5
7. " " 2 " 306
8. *State Trials* see *May*  
Vol 2 p. 306-311

a. "Unhappily for Pitt's credit, all the evidence which in a few hours convinced a small committee of his followers in the House of Commons that the state was in danger was afterwards submitted to a jury in a famous series of trials, the result was to show that the conspirators deserved just what they had always proposed to do. A reform of the House of Commons, and an English jury unlike a Scotch jury, had not learned yet to oblige the government by calling the demand High Treason."

Hammond: Charles James Fox.  
H. 106.

L. Fox.

"It resembles in its operations the conduct of the father of all spies and informers, the devil, who introduced himself into Paradise not only to inform ~~himself~~ his own Pandemonium of the state of that region, but to decry and betray its inhabitants."

Parl. Hist. Vol 31 H. 1067.

Mr. Erskine said that he was prepared to show by the sequel of the proceedings that this jury by their verdict, not merely by probable influence, but almost directly and technically, neglected the instruction of the conspiracy upon which the suspension of the Habeas Corpus, accordingly was founded."

Parl. Hist. Vol 31. H. 1090.

See next page.

The effect produced by these trials was ~~anything but~~ <sup>far from being</sup> desirable for the administration.<sup>1</sup> It afforded a popular credence to the charge brought by the Whigs that the ministers were alarmists. They had hastily pronounced as treason what at worst ~~would be construed~~ <sup>should have been construed</sup> as sedition. Acting under their advice, Parliament had suspended the Habeas Corpus Act when existing laws would have been adequate. The Whigs accepted the jury's acquittal as a conclusive refutation to their charge of ~~any~~ traitorous conspiracy. In a debate before the House on a bill for preventing Clandestine Overtures, Sheridan December 30, 1794 gave notice that he had in mind the introduction of a bill to repeal the Statute Suspending the Habeas Corpus.<sup>2</sup> He did not believe that the act under the existing circumstances should die a natural death. He was supported by Jekyll and Fox who argued that the Act of Suspension should be repealed since the reason for <sup>its</sup> passage, the assumption that a traitorous conspiracy existed, had been conclusively disproved. In opposition Pitt expressed his fear that such a measure would serve to discredit the ministers unjustly.<sup>3</sup>

When Parliament met on January 5, 1795, Sheridan as he had promised introduced his motion for a repeal of the Act of Suspension. In a speech of much vigor, full of wit and sarcasm, he reviewed carefully the state trials and showed that in spite of every effort by the administration to secure conviction, ~~no one~~ <sup>not one</sup> person had been sentenced for treason.<sup>4</sup> He ~~did~~ <sup>argued</sup> not deny that the societies were guilty of libellous and even seditious utterance ~~other~~ <sup>but as would appear</sup> that the jury's decision did negative the charge of treasonable action on their part. He argued with much force that had the jury been convinced that a traitorous conspiracy existed, Hardy must have been convicted. The very reason for which the Habeas Corpus Act had been suspended having been discredited the act should be repealed at once. He ended by charging the ministers with inconsistency and venality and pronounced a scathing criticism upon their entire spy system.<sup>5</sup> Erskine who had defended Hardy, Tooke and Thelwall, in the state trials, while supporting Sheridan's motion took a more conciliatory position.<sup>6</sup> He argued that on receipt of the king's message, Parliament had suspended the Habeas Corpus, not on proof that a conspiracy actually existed, but until such a time that its existence could be proved, or disproved. Agreeing with Sheridan that the only conclusion that could be reached from the jury's unanimous acquittal of all the prisoners brought before them was that the conspiracy was an illusion,

1. Parl. Hist. Vol. 31. H. 995

2. May. Vol 2 H. 310-12.

Hammond. H. 106, 116.

3. Parl. Hist. Vol. 31. H. 996

4. " " " 31. H. 1062-73

5. " " " 31. H. 1087-98

6



a. Vote first reading 71-13  
Parl Hist Vol 31. pp. 1143-

a (for page 69)

Deery H 220-21.

'Thus the Act - 24 Geo III Cap 34. was.  
continued in force by successive annual re-enact-  
ments, for seven years from 1794-1801.'

Fielden

In times of rebellion and disturbances it has  
sometimes been necessary to suspend the Habeas  
Corpus Act: e.g. 1689 and 1696 during  
Jacobite movements of 1714-1722-1745-  
during period of French Revolution 1794-1801

Hallam says nothing about it

he believed the act under consideration should be repealed. In the course of the debate much bitterness was shown on either side and personal allusions were freely indulged. Adair made the best speech for the Tories. He endeavored to minimize the importance of the Act of Suspension and denied that the verdict of the jury negatived the existence of a conspiracy. They had acquitted the prisoners for reasons of humanity and doubt of guilt. But even granting that the Petet Jury had been convinced that there was no case of conspiracy, the judgement of the two Houses and the verdict of the Grand Jury in his mind was of equal or even greater weight. Sheridan's motion was lost at three in the morning by a vote 185 to 41.<sup>2</sup>

As Sheridan and Fox had foreseen, the Attorney General on January 15, <sup>1790</sup> asked to bring in a bill to continue the Suspension of the Habeas Corpus Act. As he anticipated considerable opposition he believed that two weeks would be needed for a full debate. The bill was introduced the following day, and given its first reading.<sup>a</sup> On January 23 it was taken up again. Lambton, in a speech full of fire, blood and devils charged the ministers with Machiavellism, Parliament and the administration with rank corruption. Though the debate was long and heated the reasons pro and con were in the main the same as those advanced six months before.<sup>5</sup> The Whigs, however, continued to maintain that the verdict of the jury disproved the existence of conspiracy and demanded from the ministers farther proof if any there be. Asserting that the societies had not ceased their activities, the Tories declared that the reports made the preceeding May were sufficient ground for further suspension. The motion for second reading carried 239 to 53.<sup>6</sup> The report from the Committee of the Whole was made on January 28, and the bill was passed the day following. On February 3, the Lords took up the House bill for separate reading. As passed by the Commons the Act would expire on the last day of the session. On a motion by Lauderdale the date was changed to July 1. Greenville, Pitt, Auckland and ~~Laes~~ <sup>Laes</sup> spoke warmly in defense of the measure while Lauderdale and Bedford alone it appears spoke in opposition. The bill was hurried to its final passing and became a law February 5, five days after the preceeding Act had expired.

The argument on either side in both Houses were carried too far. To deny that there were seditious tendencies was rash, to affirm them there was actual treason practiced was equally rash. The acquittal by the jury established the lat-

1. Parl. Hist; Vol. 31. p. 1098-1117.
2. " " " 31 " 1130
3. " " " 31 " 1144
4. " " " 31 " 1145-53
5. " " " 31 " 1149-93
6. " " " 31 " 1191.
7. " " " 31 " 1280-91
8. " " " 31 " 1281-82
9. 35-Geo. III Cap. 3.

a. These arguments were pressed too far on either side. Proof of Treason had failed, proof of seditious activity abounded. To condemn men to death on such evidence was one thing, to provide securities for the public safety from another."

Mass. Vol 2. H. 313.

(b) In the apprehension occasioned by the course of the French Revolution. Parliament under guidance of Pitt took the hitherto unprecedented step of renewing for eight years in succession 1794-1801 the Act (Habeas Corpus).

Müller. H. 392-93.

At length at the end of 1801. the act being no longer defensible on grounds of public safety and danger, was supposed to expire after a continuous operation of eight years, — an account of acts extending over eight years.

A little later writing on Mays' part, for in his discussion he mentions only those of 1794-95 and 1798-1801.

Mass. Vol. 3. H. 13.

ter, but certainly did not prove the former. Had the opposition rested their argument on this ground, they would have had more effect, while both sides by going to the extremes exposed themselves to a charge of insincerity.<sup>a</sup>

Apparently ~~public agitation~~ had somewhat subsided toward the end of the session. At any event the Suspension Act was not continued, and contrary to statements found in the books <sup>it</sup> was not renewed until three years later. As we shall presently see, however, its place was taken by a series of measures equally, if not more oppressive and arbitrary.

The fall of 1795 found large masses of the English population in a seething state of discontent. The war had brought it attendant financial disturbances. Failure of crops served to increase the already high price of food stuffs, while the administration had rendered itself odious by repressive measures and continued prosecution.<sup>2</sup> On October 26, a meeting of the London Correspondence Society was held at Copenhagen House where more than 150,000 people listened to violent speeches. Three days later the king was attacked by a mob and shamefully misused while on his way to the Parliament.<sup>3</sup> In this state of affairs, the need of active measures <sup>was</sup> only too apparent. On November 4, Grenville laid before the Lords a bill for the "preservation of his Majesty's person and government against treasonable practices and attempts."<sup>4</sup> Six days later Pitt introduced in the House a bill to prevent seditious meetings.<sup>5</sup>

The above bills based on measures forgotten in England since the days of the Tudors were severe in the extreme. The former gave a dangerous extension to the existing laws by dispensing with the proof of an overt act to establish a case of treason. Any person compassing and devising the death, bodily harm or restraint of the king, or his deposition, or levying war upon him in order to compel him to change his measures or council, or who should express such designs by any writing preaching or malicious speaking should suffer the penalties ~~for~~ High Treason. The writing, printing, or preaching of anything which should incite the hatred of the people against the king, or ~~the~~ established form of government was made High Misdemeanor, punishable on second offense by banishment. This proposed statute was to continue in force till the end of the first session of Parliament after the king's death.<sup>6</sup> The second bill required that when more than fifty persons should be assembled for the purpose of petitioning for alteration of matters of state or church, notice be given a magistrate whose duty it should then be, to attend such meeting and prevent the

1. May. Vol. 2. H. 313.

2. " " 2 " 314-16

Hammond. H. 118.

3. May. Vol 2. H. 316

4. Parl. Hist. Vol. 32. H. 245

5. " " " 32 " 276

6. 36 Geo. III. Cap. 7



a	Bell for Traitorous Actum.	House & reading	226 - 4
	" " "	Lords Final Ed.	66 - 1
	" " " "	" " "	" " "
	Seditious Meeting	House & reading	266 - 1
	" " "	Lords Final Ed.	107 - 1

adoption of any resolution, or petition tending to arouse the people against the king, his government or the constitution. Magistrates were empowered to arrest the ~~people~~ <sup>persons</sup> or persons making such propositions. Resistance was punishable by death. They were authorized to disperse any meeting which they should consider tumultuous. If twelve persons remained one hour after order to disperse, they were made liable to punishment by death. Three years were fixed as the period for that measure.

In vain did the Whigs in both houses remonstrate against these violent measures.<sup>2</sup> If our knowledge of Fox's public career extended no farther than the part he played on this occasion, it would be sufficient to place him in the first ranks of the champions of personal liberty in England. Petitions from societies and various groups of men, through the country poured into Parliament praying that the proposed measures be dropped.<sup>3</sup> But all was of no avail.<sup>4</sup> The two obnoxious bills were passed by overwhelming majorities and became laws on December 18, 1795.

Though the sudden creation of crimes and extension of old ones aroused violent opposition throughout the country, these measures, extreme limitations as they were upon long established rights of the people, were not after all so arbitrary and dangerous in their very nature as the Suspension of the Habeas Corpus. Under the latter so long as the statute was in force suspicion took the place of conviction by jury, since anyone arrested on suspicion of treason could be released, or brought to trial only on order by the Privy Council. In the hands of corrupt and violent ministers this power might even be made ~~the~~ most destructive engine of tyranny. It would be quite possible that an innocent man who had been so unfortunate as to arouse the suspicion, or it may be the mere displeasure of a minister might be held indefinitely in prison, when if he had an opportunity, could have proved his innocence on trial. Under the measures passed December 18, 1795, while it is true severe punishments were imposed upon actions hitherto considered rights, the people had nothing to fear so long as they refrained from committing these prescribed acts. No one should suffer punishment till found guilty in court. If arrested illegally, he could secure his release at once on writ of Habeas Corpus. Though both measures were oppressive, the one was vague and uncertain, the other certain and exact.

The laws of December 18, 1795 failed of their desired end.

1. 36 Geo. III. Cap. 8.
2. Brief summary of debate. See May. 2d 24. 317-323  
Hammoud. pp. 18-21.
3. May. 2d 24. 323.
4. Date as given in Statute at Large.

Instead of crushing out the Republican societies it forced them to open public associations into far more dangerous secret organizations. Persecuted, they grew more and more bitter and violent in their denunciation of the ministers and the whole system of administration. An veritable flood of secret correspondence was carried on throughout the entire kingdom with France and later with Ireland. On May 19, 1797 Fox in one of the most able and eloquent speeches of his life moved for the repeal of the statutes passed December 18, 1795. His burning words of liberty, however, seemed to have fallen on deaf ears for his motion lost, 260 to 52.<sup>5</sup>

Until, 1795, Pitt through his wonderful tact, and by many valuable concessions had succeeded in delaying the storm which had been gathering in Ireland since the outbreak of the French Revolution.<sup>6</sup> The change in the ministry in that year precipitated the struggle which ended in the act of union 1800.<sup>7</sup> The intervening series of atrocities, I need not mention. Through the efforts of Secret Societies in Ireland France had been persuaded to offer help, in the hope no doubt of using Ireland as a stepping stone to England itself. Hocke's expedition to Bantry Bay 1796 ended a dismal failure. Still France did not despair. In the meantime the secret societies in England had been playing a dispicable role. In constant correspondence with the powerful Society of United Irishmen, they encouraged the rebels to action, holding out the hope of aid from England itself.<sup>8</sup> At the same time, these English Societies were urging France to take an active part in Ireland's behalf and did much no doubt, to arouse the mutiny among the English marines, which so threatened the navy at the moment. The government was not blind to these secret machinations.<sup>9</sup> An army of informers kept the ministers in close touch with every movement.<sup>10</sup>

#### Chapter IX

It was at this juncture of affairs when in April 1798, news reached the king that the enemy were gathering troops and collecting supplies across the Channel.

1. Hammond. pt. 120.
2. Parl. Hist Vol 33 pt. 632,
3. " " " 33 pt. 613-24.
4. For phases of Irish Question see  
Falkner's Studies in Irish History  
Lichy's History of England. 18 century.  
Froude. Leaders of Public Opinion.
5. Goldwin Smith Vol 2. pt. 286,
6. Mac. Vol 2. pt. 328-29.
7. Bright. pt. 1194.

(4) Hammond. Charles James Fox. H. 134.

The first is the strong and steady light of  
Common sense which pierced and frustrated  
all the rumors and phantoms of dark,  
seditious and twined the House of Commons,  
When the ~~search~~ Secret Committee with  
scared faces and trembling hands brought  
in the report —————

(b). Indeed there is not time for the House at present  
so plausible a ground for suspending the  
Habeas Corpus Act as there was when it was  
last suspended. Committee of each House  
sat for several days and examined into  
the subject and declared their opinion to be  
that there existed, —————  
Parl. Hist. Vol 33. p. 1429



the channel for an immediate attack on England. On April 20, he laid before Parliament a special message warning the members against invasion and adding "the enemy was encouraged by correspondence and communication of traitorous and disaffected persons and societies in these kingdoms." Promising to use every measure provided by Parliament for the safety of the nation, he ended by saying that under the circumstances, "it was indispensably necessary to recommend it to their consideration without delay of ~~such~~ farther measures as may enable his Majesty to defeat the wicked machinations of disaffected persons within this realm." The fears of the House were second only to those of the king and his ministers, even Sheridan apprehensive of the worst, urged harmony and promised his support to any measure having for its purpose the defeat of the impending dangers.<sup>3</sup>

In the meantime the Lords, had hurriedly passed, and on April 22, laid before the Commons a bill "empowering his Majesty to secure and detain such persons as his Majesty shall suspect as conspiring against ~~the~~ person and the government."<sup>4</sup> The remedy, however, was more than Sheridan could swallow. He declared that the act of suspension four years earlier was justified on better grounds than the ~~similar~~ bill under consideration, for the former had been passed only on the recommendation of the Secret Committee which had thoroughly investigated all the evidences to support such a measure. The House was now acting on ~~mere~~ mere rumor.<sup>5</sup> Pitt naturally defending the bill, said that before when France was threatening to invade England, the latter had relied on the weakness of the former. But now France was fully prepared. Relieved from perplexities on the continent, she was free to direct her combined forces against England. The activities of the Secret Societies at home in common with the enemy abroad, rendered the present bill necessary as a means of protection.<sup>6</sup> As passed by the Lords the bill was made to expire February 1, 1799. Sheridan endeavored to have it limited to November 1, or to 10 days after the commencement of the next session of Parliament. The motion lost 113 to 14. The bill as passed by the Upper House became a law April 22, 1798.<sup>7</sup>

It is now generally recognized, that Napoleon in 1798 had little, or no intention of undertaking an English invasion he was threatening that country only to conceal his real plan ~~for~~ an Egyptian expedition.<sup>8</sup> Fear in England rapidly subsided after May 19, when Napoleon set sail from Toulon in a fleet comprising practically the entire naval strength of France,

1. *Parl. Hist.* Vol. 33 H. 1421.

2. *Hammond* - H. 184.

3. *Parl. Hist.* Vol. 33 H. 1424-27.

4. " " 33 " 1429.

5. " " 33 " 1429.

6. " " 33 " 1430-32.

7. " " 33 " 1433 and 38 *Gen. III* Col 36.

8. *Bright* H. 1219.

(a) Tierney.

"The number of persons who had been arrested in consequence of the suspension of the Habeas Corpus Act. had been between 70 and 80 who were now all discharged except a few, and these were not brought to trial. though detained in confinement - since last April.

Parl. Hist Vol 34 pt. 117

and particularly after the news of Nelson's complete victory in the battle of the Nile on August 1, reached England. In the meantime, the rebellion in Ireland had received its death blow by the capture of the rebel camp at Viniger Hill June 21. In the happy change of affairs, it would seem the further suspension of Habeas Corpus was unnecessary. Such, however, was not the opinion of the administration. Although the present Act would not expire till February 21, 1799, as early as the middle of December a bill for its continuance to May 1, was laid before the House. On December 1 Courtney and Tierney made a vigorous attack on the bill, showing that the dangers of invasion which had justified the passage of such a measure in the preceding April no longer existed since the destruction of the French fleet by Nelson. The ministers too, they urged, had abused their power. According to their statements, 70 or 80 persons had been arrested under the authority of the Act, but no one had been brought to trial, though several had been released, the rest were languishing in cold noisome, unhealthy cells, fed with miserable food, and placed among common criminals. Pitt and the Attorney General urged, however, that the treatment of prisoners was a subject wholly alien to the present question, that if prisoners were mistreated, complaints should be made to a magistrate, not to the House. Several members, among whom was Wilberforce, testified that the prisoners were receiving the very best treatment. The motion for second reading carried 96 to 6. The bill was debated again on the 26th and passed on the 27th. The Lords took up the House bill for the third reading January 4th. Holland and Suffolk ~~the~~ Courtney and Turney among the Commons made much out of the treatment of the prisoners. They demanded that additional reasons for suspension be given. But Grenville entertaining little fear from their ineffective opposition replied that the reasons given the preceding April, although somewhat diminished in force were still sufficient ground for further continuance and even went so far as to refer them to the report of the Secret Committee made on a similar occasion four years before. The vote on third reading stood 26 to 1.

The small number of votes cast is explained by the fact that a large majority of the members were absent during the Christmas festivities. Nevertheless the opposition was astonishingly weak. Dangers of invasion had blown over and though the Irish were still in arms their ultimate defeat was now certain. Probably the ministers and their Tory adherents

1. Bright: *ibid.* 1220-21.

2. " " 1214.

3. *Parl. Hist.* Vol 34 *ibid.* 111-114.

4. " " 34 " 117-120; 124-25.

5. " " 34 " 125-131.

6. " " 34 " 169-172.

7. " " 34 " 169-172.

8. *Parl. Hist.* Vol 34 *ibid.* 188. 89 *ibid.* Col. 15.  
9. See Falkner's *Studies in Irish History*.

(a) "Secretary Dundas presented to the House by his Majesty's command, copies and extracts of Papers containing secret information, received by his Majesty's government relative to the proceedings of different persons and societies in Great Britain, and Ireland, engaged in a treasonable conspiracy, and to the design carried on by our enemies in concert with such persons and societies for effecting the separation of Ireland from the Kingdom, sealed up. Parl. Hist. Vol 34 p. 205.

f. Dundas says two Irishmen and one Swede.



wearied with the perseverance of the Societies had resolved to continue these oppressive measures until the last vestiges of Jacobinism had been stamped out. For similar reasons the Suspension of the Habeas Corpus had been continued in 1746 long after any real dangers from the Jacobites had disappeared.

On January 23, 1799, the king laid before the House several papers belonging to secret societies in England.<sup>2</sup> These papers were referred to a Secret Committee which reported on March 15, that various persons and societies in England and Ireland were engaged in a traitorous conspiracy.<sup>3</sup> On April 19, the House resolved itself into a Committee of the Whole for the consideration of the report.<sup>4</sup> Pitt gave notice that he intended to introduce two remedial bills, - one was the continuation of the Suspension of the Habeas Corpus Act with the addition that his majesty be empowered to transfer from the metropolis to any part of the kingdom any person for treasonable, or seditious practices, because as the law stood, these persons could continue their treasonable practices in prison. The king should be empowered to confine in England prisoners taken in Ireland under the authority of the Suspension Act. The second bill would provide that all persons continuing to be members of societies after a given date should be subject to fine, imprisonment, or transportation. These bills were later introduced and passed with little effect. The former one having the date of May 20, 1799, continued the Suspension of the Habeas Corpus Act till March 1, 1800.<sup>5</sup>

The Attorney General on February 13, 1800 brought in a bill for the further continuation of the Act of Suspension.<sup>6</sup> He offered as the justification for such a measure the report of March 15, made the preceding year, since the conspiracy therein mentioned still continued, he said. Windham doubtlessly voiced the sentiment of the House when he said that as the law had proved efficacious against conspiracy it should be retained till all such dangers were passed.<sup>7</sup> Frances, however, complained that many persons had been under arrest from one to two years, but no one, had been brought to trial.<sup>8</sup> The motion carried 69 to 9.<sup>9</sup> On the 19th the Attorney General praising the leniency of the ministers said that only one Swede, one American and one Irishman had been arrested since the passage of the last act.<sup>10</sup> After Sheridan offered his customary protest the motion for the second reading was carried in the affirmative by 98 to 12. The bill was then hurriedly passed

10 *Parl. Hist.* Vol. 34. H. 1472

1. *Abbr. H.* 48.

2. *Parl. Hist.* Vol 34 H. 208

3. " " " 34 " 579-615

4. " " " 34 " 984

5. " " " 34 " 988

6. 39 *Gen. III* Cap. 44

7. *Parl. Hist.* Vol 34. H. 1465

8. " " " 34 " 1466

9. " " " 34 " 1468-69.

b. King. "He condemned the great length of time which has elapsed since the imprisonment of the 29 persons now immured in different gaols. some upwards of two years without being brought to trial."

Parl. Hist Vol 84, p. 1486.

a. Motion for 3 readings carried 80 to 3.

d. "What opinion must these gentlemen form of this country from such a discussion. After having heard so much of rebellion and treason in this own country; what must be their feeling on finding a measure proposed to them for preventing sedition in this country to which Ireland has never resorted?"

Parl. Hist Vol. 34 p. 723.

and sent to the Lords for approval. On the 23rd, Holland and King, in the course of their arguments said that there ~~were~~ then in prison 29 persons arrested on suspicion that certain ones had laid there for two years awaiting trial.<sup>7</sup> The bill received the royal signature<sup>8</sup> February 27 continuing the Suspension of the Habeas Corpus Act till February 1, 1801.<sup>9</sup> With the exception of 1722 this was the longest single Suspension in English History.<sup>10</sup>

On December 11, 1800, the Attorney General once more asked leave to bring in a bill for the continuance of Suspension Act. He explained that since the present act would expire on February 1, and since the Parliament would convene but ten days before that date<sup>4</sup> after the time required for organization, the members would scarcely have an opportunity of discussing its merits and demerits before the Act would expire. Sheridan gave it as his opinion that the time had come to drop the measure entirely.<sup>5</sup> He deplored the effect such a law would have on the Irish, who had concented to the Union in the hope of finding in England peace and order.<sup>6</sup> Pitt urged the bill on the ground that in the present state of unrest in the country, if the measure was dropped one more severe must take its place.<sup>6</sup> In support of the assertion Turney demanded that proof of conspiracy be showed. The Habeas Corpus Act had already been suspended for nearly two years on the strength of a report made in 1799. Within that period, not one person had been brought to trial for conspiracy. He believed that the real motive for the present bill was to be explained by the fact that certain persons were under arrest whom the ministers would not know how to deal if the guarantee to writ of Habeas Corpus were restored.<sup>7</sup> The motion carried 51 to 13, and this bill was accordingly introduced on the following day. In answer to Halbourn's assertion that certain persons had been suffered to lay in prison for nearly three years on charges which they could have easily disproved had they been given the opportunity. Hawkesbury expressed as his opinion that had not the Suspension Act of 1795 been permitted to expire much evil would have been averted.<sup>8</sup> On December 15, when the bill was again under consideration Grey presented a violent ~~petition~~ petition from Paul Thomas Le Maitre, one of the sufferers from the Suspension Act. Owing to the indecency of its language, the petition was laid on the table by a vote of 59 to 8.<sup>10</sup> Jekyll in the course of a speech against the bill said that there were then 25 persons in prison who had

1. *Parl. Hist.*, Vol 34. H. 1478

10. *Parl. Hist.* Vol 35 H. 742.

2. 46 Geo III Cap. 20

3. *Abbr H.* 41

4. *Parl. Hist.*, Vol 35 H. 719.

5. " " " 35 " 720-23

6. " " " 35 " 723-26; 729-30

7. " " " 34 " 727-729

8. " " " 34 " 732.

9. " " " 34 " 742.

(a) From report to Secret Committee April 13.  
" They put it a duty incumbent on them to  
take the first moment of stating to the House  
their strong and unanimous opinion,  
grounded on the information which they had  
received, that no time ought to be lost in  
reviving those measures of precaution which  
wisdom of Legislation has before adopted.  
particularly act for the Suspension of the  
provisions of the Habeas Corpus Act. and the  
Act to prevent seditious meetings.

Parl Hist Vol 35 Pt. 12 76



laid there for nearly two years on suspicion only.<sup>1</sup> The House divided 52 to ~~40~~ on third reading.<sup>2</sup> The bill was then passed extending the Act of Suspension till six weeks after the meeting of the Imperial Parliament.<sup>3</sup> Little opposition was encountered in the Upper House aside from Holland's customary attack.<sup>4</sup>

Though opposition against the continuance of the Suspension Act was weak in December, the extraordinary measure had nearly run its course. Intended only to tide the nation over periods of great public danger, the law could not be tolerated long after those dangers were passed. The Irish Rebellion had been happily quieted and England had little fear of a French Invasion. The once terror inspiring secret societies ~~were~~ now ~~coming~~ to be considered in the light of their real importance. It would seem that the ministers themselves were not contemplating any very considerable extension of the Suspension Act when they had asked for the short renewal of six weeks.<sup>5</sup> At any event, the last Act was permitted to expire and no attempt for further extension so far as I can discover was made at that time.

After so many years of violation, a momentary reaction set in before the old constitutional guarantee to personal liberty could be reestablished on a permanent basis. The secret societies continued. It appears that after the Suspension of the Habeas Corpus Act had expired in March 1801, convivial meetings were held by these societies in honor of the release of certain of their members, and toasts, more rash than dangerous were offered in the name of freedom. These meetings were made the excuse for a renewed attack on the secret societies. On April 1st, the king laid before the House papers containing secret informations concerning the state of Ireland and certain disaffected persons in both parts of the United Kingdom. As on previous occasions, these papers were referred to a Committee of Secrecy.<sup>6</sup> On April 13, the Committee reported that it would be impossible to give a detailed statement of the conspiracies then, but that the conspiracy reported in March 1799 was still extant, ~~and~~ the activity of the secret societies had greatly increased since the expiration of the Suspension Act. The Committee recommended the immediate renewal of that law and the statute against Seditious Meetings.<sup>7</sup> A motion for further consideration carried 128 to 31. In accordance with this report, Peltam the following day introduced a bill for the Suspension of the Habeas Corpus Act.<sup>8</sup> Addington, the new Chancellor, said that since certain seditious tendencies particularly Jacobinism

1. *Parl. Hist.*, Vol. 35 H. 744
2. " " " 35 " 748
3. " " " 35 " 749-54
4. 40 *Gen III* Col.
5. *Parl. Hist.*: Vol 35 H. 720
6. " " " 35 " 1275
7. " " " 35 " 1276
8. " " " 35 " 1277

a. End of Rept. of Secret Committee. May 13, 1801.

"Under these circumstances, your Committee cannot forbear submitting to the wisdom of the House the propriety of such an act of Indemnity, as may protect all persons concerned in their commitment - from the effect of any legal proceeding, without subjecting them to the necessity either of suffering for a conduct in itself meritorious, or of declaring in their own defence, those particulars which your consideration of humanity, good faith and policy, must render it their duty to conceal."

Parl. Hist., Vol 35, H. 1322.

must be suppressed, the present measure was essentially necessary. These words called from Burdett the question, "Was it Jacobinism to assert and maintain liberty, to keep a jealous eye upon the encroachment of the Crown? If so that was the old Jacobinism of the Constitution." Grey observed that less than thirty persons had been arrested after the supposed conspiracy of 1799, that with two exceptions these persons had come from the lowest station in life and all had been released when the Suspension Act expired. To the great amusement of the House, John Horn Tooke remarked that it had been said that ministers and the king were in danger of assassination. He would like to know if no assassination was ever to be apprehended from his majesty and ministers. He was under the impression that he himself had thus once been assassinated. The motion for second reading received 189 against 42 and the bill was then passed to its final passage on the same day. In the Upper House, Earl Moira and Lords Holland opposed the bill, but it was soon passed and received the king's signature April 18, 1801, suspending the Habeas Corpus Act till six weeks after the meeting of the next session of Parliament which convened October 29.

The Committee of Secrecy on the "state of Ireland and the proceedings of certain disaffected persons in both parts of the United Kingdom," in a short report on April 27, 1801 and in a much longer one on May 15, declared that the activity of societies in the two countries was on the increase. Many bold and rash toasts and resolutions were advanced in support of this statement. Nevertheless, I believe that the Committee knew that such extraordinary measure as the Suspension of the Habeas Corpus Act endangering the personal liberty of all must soon be dropped permanently. At the end of their report, they recommended an Act of Indemnity for all persons who had been concerned in the many commitments made on suspicion. The Committee explained that much of the information on which the government had acted in support of these arrests was of such a nature that its revelation would endanger public safety. If prosecutions were brought against public officers, this revelation would often be necessary as a measure of protection. The Committee reported that they had carefully investigated the ground on which the many arrests of suspicion had been made, and assured the House, the order for every commitment had been fully justified by previous examination. The reasons why the information on which the government had acted, if revealed would have been dangerous, were not fully

1. *Parl. Hist.* Vol. 35 M. 1279-1281

2. " " " 31 " 1284

3. " " " 31 " 1286

4. " " " 35 " 1290

5. " " " 31 " 1293

6. " " " 35 " 1293-97

7. *41 Geo. III. Cal.* 26

8. *Parl. Hist.* Vol. 36 M. 1

9. " " " 35 " 1275-77

10. " " " 35 " 1301-23

11. " " " 35 " 1328

a. Whereas by an act passed in the Parliament of Great Britain, in the thirty fifth year of his present Majesty's reign, entitled an act to improve his Majesty ----- which act was to continue in force ~~until~~ until the first day of February, 1795: and it was afterwards by a subsequent act, continued until the first day of July 1795: and whereas by another act passed in the Parliament of Great Britain in the thirty eighth year of the reign of his present Majesty also entitled an act to improve ----- which act ----- to continue in force until the first day of February, 1799. and was by another continued until six weeks after the commencement of the present session of Parliament; and whereas by another act passed in the present session of Parliament entitled, "An Act for renewing and further continuing until the next session of Parliament, several acts made in the 38th, 39th and 40th years of his present Majesty, and in the last session of Parliament" etc.

41. Geo III. Cap. 66.



explained. Aside from the fact that the ministers desired to be released from prosecution in case even if those prosecutions would be useless, the administration feared that the investigation would disclose such an extended and far reaching spy system as to arouse a popular indignation.

On May 27, 1801, the Attorney General, Law, in accordance with the recommendations of the Committee of Secrecy asked leave to bring in a bill, "for indemnifying such persons as since the first day of February 1793 have acted in the apprehending, imprisoning or detaining in custody in Great Britain of persons suspected of High Treason, or Treasonable Practices." After citing the preamble the various statutes Suspending the Habeas Corpus passed since 1794 and the reasons for each Suspension,<sup>a</sup> the bill continued, "Whereas in order to secure the internal peace and tranquillity of the country and to counteract the traitorous designs in the said acts recited, it hath been deemed necessary from time to time to apprehend, imprison and detain in custody, in Great Britain, divers persons suspected of High Treason on treasonable practices; and whereas in case the act and proceedings of the several persons employed, or concerned in such apprehending, imprisoning and detaining in custody, should be called in question, it would be impossible for them to justify, or defend the same without an open disclosure of the means by which the said traitorous designs were discovered, <sup>and</sup> it is necessary, for the further prevention of similar practices, that those means of information should remain secret and undisclosed." "All personal actions, suits, indictments, informations, or presentations heretofore brought, commenced ---- or now depending, or to be hereafter brought ----- and all judgements thereupon obtained ----- and all presentations whatsoever, --- for, or on account of any act, matter or thing by him then done --- in Great Britain, since the 1st day of February 1793, for apprehending, imprisoning, or detaining in custody any person charged with, or suspected of High Treason or treasonable practices, shall be discharged and made void----- and indemnified as well against the king's majesty, his heirs and successors, as against the person and persons apprehended, ---- and all other persons or persons whomsoever."<sup>3</sup>

The great scope of this act of Oblivion is at once apparent.<sup>4</sup> All wrongs committed by persons in authority since February 1, 1793, under serene of acting in defense of public safety, were to be forgotten, although the Suspension of the

1. *Parl. Hist.* Vol. 25. H. 1307.
2. 41 Geo. III Cap. 66.
3. 41. Geo. III Cap. 66.
4. *Brill.* discussion of Indemnity Act  
*May.* Vol 3. H. 15-16.  
*Midley.* H. 393.  
*Deuq.* H. 218-222.

Habeas Corpus Act itself had been in force less than one half of that term. It is not to be wondered that the proposed measure brought down a storm of opposition from the Whigs. They believed, or at least pretended, to see in the bill the climax of the arbitrary and ultra-constitutional measures employed by the government during the past eight years, it would result in removing responsibility from ministers and others in authority. The arguments advanced in favor of the bill were practically those used by the Committee of Secrecy. Pitt in summing up the long debate said, "The bill was not intended to secure persons from punishment who had broken law, but to protect persons from punishment who had acted according to the laws and who, if they should be accused, could not defend themselves without disclosing secrets which they could not disclose without the greatest danger to the liberty of individuals and the State." On June 5th, six petitions against the passage of the bill were presented, but ~~was~~ <sup>was immediately</sup> laid on the table.<sup>3</sup> On June 11, several more petitions met the same fate.<sup>4</sup> Windham defended the spy system as the only practicable means of dealing with conspiracy.<sup>5</sup> The report of the Committee of the Whole was received by a vote of 172 to 38. Johnson and Sheridan labored to limit by amendment the Indemnity till the close of the war, but the motion lost 92 to 17.<sup>6</sup> The bill was passed June 11, 84 to 15.<sup>7</sup>

The House bill was taken up by the Lords on June 19. Suffolk, Carnarvon, Mairay, Thurlow strongly opposed such a measure while Harcourt, Westmorland and Rosslyn spoke in its defense. The latter declared that "the ministers do not claim an indemnity for themselves, it is not possible for them to be reached by an action; but an indemnity is necessary to save harmless other persons who have necessarily assisted in the apprehending, examining, committing to prison, and detaining in custody the persons apprehended. The employment of spies and informers has been absolutely necessary and government at all times but most especially in these times, could not secure protection to the subject without their occasional assistance." There was a division on second reading, 54 to 17 in favor of the bill.<sup>8</sup> It was then passed and became a law, June 24, 1801.<sup>10</sup>

1. Parl. Hist. Vol. 34-H. 1527-34 (Debate in House of Commons.)
2. " " " 35 " 1529
3. " " " 35 " 1531
4. " " " 35 " 1527
5. " " " 35 " 1528
6. " " " 35 " 1534
7. " " " 35 " 1534-41 (Debate in House of Lords.)
8. " " " 35 " 1540
9. " " " 35 " 1541
10. Same as given in Statute at Large.

a. An exhaustive study of the Suspension of the Habeas Corpus Act in this period, is impossible without the Hansard Debates. Unfortunately I have not access to them. My primary sources have been the Statutes at Large and two contemporary articles in the Edinburgh Review, — "History of the Habeas Corpus" Vol. 28. pp. 59-83 and "Present State of Public Affairs." Aug. 1817. Vol. 28 pp. 516-41. The latter though written in a strong partisan spirit, throw much light on the discussion.

I have been compelled to rely very largely on the secondary sources. Of these, Harcourt Martineau's "History of the Thirty Years Peace" is the best. She has made a careful and exhaustive study of Parliamentary History of this Period. Naturally the Suspension Act is given considerable attention. She has made frequent and extended quotations from the speeches and reports of Parliament. Spence's Ralph's "History of England from the Conclusion of the Great War, though much shorter, is quite satisfactory so far as it goes. Its treatment of economic and social conditions is excellent. Among the more general accounts should be mentioned. Burgh. May. Crompton's Lives of the Lord Chancellors. Article in the Dictionary of National Biography, etc.



The period in English history roughly limited by the dates 1812 and 1820 and commonly known as the Regency, will always be remembered for unparalleled industrial disturbances for intense suffering among the lower classes and severe governmental oppression.<sup>5</sup> The encroachment ~~by~~ the liberties of the people was the result and not as was the current belief the cause of the intense suffering and subsequent disturbance among ~~the~~ certain classes. As we look back from from this distance of time we can see more plainly than the people of that day that the suffering, discontent and sedition were the natural outgrowth of many cooperating agencies, chief among which were a long series of bad harvest throughout England and western Europe, the rapid substitution of machine for hand labor in manufacturing industries and the exhaustive wars on the continent.

In spite of a profitable contraband and exemption trade, Napoleon's Continental system and the British Orders in Council which had closed the ports of France and Germany to English imports, had greatly diminished the demand for English manufactures. In consequence, labor was unable to find employment. A long series of poor harvests from 1804 to 1816 had ~~doubled~~ and at times trebled the price of foodstuffs. Thrown out of employment and obliged to pay unheard of prices for the necessities of life, the laboring population were unable to support their families. Incapable of reasoning far into the causes of things, this starving class saw in the introduction of machinery their ruin. As early as 1812 riots had broken out in northern England. Disguised mobs of idle laborers, called Luddites, would enter manufacturing towns, breaking machines and burning property.<sup>3</sup> By 1814 however the government with much severity had apparently crushed out this movement. Still the suffering continued without remedy.

The peace of 1815 was welcomed by all classes with greatest enthusiasm. A new period of prosperity, it was believed, was at hand. Through a carefully organized contraband trade many merchants had made immense profit. Now that the continental ports were again thrown open to trade, commerce would increase with leaps and bounds.<sup>4</sup> A period of wild speculation followed. Capital was turned from legitimate and lucrative ~~trade~~ channels to purchase colonial products. But ~~a~~ contrary to expectations the purchasing power of the continental countries was exhausted and the products lay at the ports unsold. A severe financial crisis was the inevitable result. Banks either failed altogether or stopped the issue of paper money. The reduction of the

1. Bright. H. 1331.

2. Martinus. Vol I. H. 49.

3. Martinus. " 1. 63-66.

4. Helyar. Vol I. H. 423-24.

Bright. H. 1332

4. Martinus Vol I. H. 52-53.

5. May. Vol II. H. 341



circulating medium in turn raised the prices. Trade came to a sudden standstill.

During the later years of the war, inspite of poor harvests, the high price paid for grain had filled the farmer's purses. The war however had set the fatal example improvident expenditure. Careful, economical farmers had turned to spendthrifts, who later filled the ranks of speculators above mentioned. While the price of grain was high, much available land was turned into production which at ordinary times would have fallen far below the margin of cultivation. The sudden fall in the price wheat in 1815, due to a partial return of good harvests in that year brought ruin to the farmers. The cost of production exceeded the price of production.<sup>2</sup> It was this state of affairs that induced Parliament controlled by the proprietary class to pass the Corn Law of 1815, prohibiting the importation of corn till its price had reached 80 shillings per quarter.<sup>3</sup> The law doubled the income from the land to the benefit of the owners. Rent and prices rose but wages continued unchanged.<sup>4</sup> This law did much to aggravate the already overstrained feeling between the proprietary and laboring classes. But aside from small riots at London, no violence at first resulted.

The winter of 1815-16 was the severest England had suffered since 1799.<sup>5</sup> Heavy frosts in the spring and destructive floods in early summer not only in England but throughout western and southern Europe promised a universal famine. Wheat rose from 52s. 6d. in January to 103s. by the close of the year.<sup>6</sup> There was a surplus of labor in every industry.<sup>7</sup> I have showed why the demand for labor in the manufacturing industries had practically ceased. The inclement weather now deprived the agricultural laborers of employment. Remembering the Corn Law of the preceding year and failing to see that their employers were being ruined too, the laboring class believed that it was in the middle class the cause of their misery was to be found. The suffering of the former at this moment was severe in the extreme. In one parish of Dorsetshire, it was said that 419 out of 575 were on receipt of relief. At Swanage, six out of seven were paupers.<sup>8</sup> Whole villages were depopulated, the inhabitants having closed their houses and were wandering about the country in search of work or help which their parish was unable to give.<sup>8</sup> In 1816 then trade was at a standstill, merchants and manufacturers and farmers saw ruin staring them in the face and laborers of all classes on the verge of starvation.

1. Hall's Vol 1. p. 402-3.

2. Martineau Vol 1. p. 40-57

3. Brough. p. 1330

4. Signor's Political History of Modern Europe p. 31

5. Martineau Vol 1. p. 61. Hall's Vol 1.

6. Hall's Vol 1. p. 417. quotation from Scott.

7. Hall's " " " 420 (Report of House of Commons).

8. Martineau Vol 1. p. 63.

In May agricultural laborers in the eastern counties broke out in acts of violence. In Norfolk and Suffolk nightly fires were common occurrences and mills were pulled down. The town of Littleport on the isle of Ely for two days suffered the ravages of a starving mob. The militia was called out and much blood was shed on both sides before peace was restored.<sup>1</sup> As a result 34 persons were sentenced to death though only five were actually executed.<sup>2</sup> In Staffordshire the discontent took a different form. Bodies of laboringmen set out for London with wagons filled with coal. A large force of police prevented whatever violence might have been intended and government, after having bought their coal, quietly sent the laborers home.<sup>3</sup> In the manufacturing districts of the north the Luddites or frame-breakers again threw the inhabitants into a state of terror by their acts of violence.<sup>4</sup> At first these outrages were the direct result of adverse economic and social conditions. The participants were severely punished by the government.

With the winter of 1816 however these isolated movements began to take on a political complexion. The change was largely due to the political writings of William Cobbett.<sup>5</sup> In his Political Register he taught that the cause of the suffering among the various classes lay in misgovernment and declared that prosperity would never return till Parliamentary Reform was an accomplished fact. In clear, simple but remarkably forcible language he counseled the people against sedition and acts of violence, but urged their united and continued efforts for certain changes in the system of government. Till November 2 1816 his paper was to be found only in the homes of the middle and upper classes. But by changing its price from one shilling to twopenny a sheet, it at once became the oracle of the laboring people.<sup>6</sup> The effect was at once apparent. Riots became less frequent and public meetings took their place. The movement became largely political and did not cease till the Reform of 1832 was accomplished. The acts of violence which were the immediate excuse for the arbitrary measures of 1817, although originated and carried on by certain persons from among the lower classes were in fact lamented and condemned by these classes as a whole. The great mass remained untainted.

Misery, discontent and disturbances have always proved fertile in bringing into prominence political agitators, who in ordinary times would scarcely attract attention. In 1816 the Hampden and Spencean Clubs which had been organized for the purpose of furthering political and social reforms, had fallen under the leadership of a few self-

1. Martinian Vol. 1. H. 62-64.

2. Kelyak Vol. 1. H. 421

3. Martinian Vol. 1. H. 64

4. " " " 65

5. " " " 43-76 and Bright. H. 131-2.

seeking demagogues! Since Parliamentary Reform was a part of their program, these leaders resolved to profit by the sudden change social and economic discontent had recently taken. Thistlewood, the two Watsons<sup>and</sup> two other men of like character had formulated a wild scheme for subverting the government. A Committee of Safety was to be chosen, the barracks fired, the Tower and Treasury attacked and then trust to Providence for success? After having collected some 250 pikes, the scheme fell through lack of money to rent a house in which to keep their supplies? A notice was then posted calling; "a meeting of the distracted manufacturing, artisans, and others of the cities of London and Westminster, the Borough of Southwark and parts adjacent, in Spa-Field on Friday, the 15th of November at 12 O'clock, to take into consideration the propriety of petitioning the Prince Regent and Legislature to adopt immediately such measures as will relieve the suffering from the misery which now overwhelms them".<sup>3</sup> The meeting was accordingly held inflaming speeches delivered and then the meeting adjourned till December 2 to await the Regent's reply. On the latter date a large crowd was present. The younger Watson declaring petitions were all in vain seized a tricolored flag, rushed with a mob of the more desperate to gun-shop, shot a gentleman who dared to interfere remonstrate with them and started for the Tower and the Royal Exchange. At the latter place the Lord Mayor of London with only seven assistants made ~~againt the riot~~ ~~several arrests~~ ~~and completely suppressed the riot~~. In the meantime Hunt the principal speaker on November 15th. had arrived on Spa-Field and addressed the people who had remained. Through his influence another meeting was to be held in the same place on the second Monday after the opening of Parliament. During the interval secret societies were to be formed for the purpose of obtaining annual Parliaments, universal suffrage, vote by ballot, abolition of property qualifications for members of Parliament and paid representatives to the House of Commons.<sup>5</sup> The meeting was then dissolved without farther disturbance.

The unfortunate riot at Spa-Field directed by a few ignorant hot-heads and the formation of secret societies through out the country were unjustly connected and gave rise to an intense feeling of alarm among the middle and upper classes. It was feared that the country was on the verge of a revolution. While the public mind was in this feverish state, Parliament met on January 28th. 1817.<sup>6</sup> In his speech from the throne on that date, the Prince Regent said,

1. Martineau Vol. 1. 76-88.

2. Halyah " 1. 427.

3. " " 1. 427-28. Martineau Vol. 1. 11. 83.

4. Martineau Vol. 1. 11. 84. (See James Shaw account).

5. Halyah Vol. 1. 11. 421-32.

6. Statutes at Large Vol. 57 M. 1.



"in considering our internal situation you will, I doubt not feel a just indignation at the attempts which have been made to take advantage of the distresses of the country, for the purpose of exciting a spirit of sedition and violence,---I am determined to omit no precaution for preserving the public peace and for counteracting the designs of the disaffected." On returning from Parliament, the Prince Regent's carriage was surrounded by a crowd of desperate persons. ~~Many~~ insults were showered upon him and one over zealous person threw a stone through his carriage window.<sup>2</sup> A more unfortunate occurrence could scarcely have happened. The outrage was at once connected with the Spa-Field riot and the Secret Societies. It was pouring oil on the fire of alarm.

The motives which induced the government at this juncture to press for extraordinary measures were various. The suffering occasioned by changes in industrial methods, bad harvests, and the passage of the Corn Law; the early acts of violence growing out of discontent which later took on a political complexion and the outrages of December 1816 and the following January which had been construed as the forerunner of a great political revolution, have all been discussed. Fear had taken possession of the people. It cannot be denied that the government shared this fear. But then there were other reasons why it should wish to increase, rather than diminish this popular feeling. The Tory party which had carried on the war realized that their influence was rapidly decreasing. The great burden of taxes, the general suffering and discontent, and the insurrection of certain leaders had aroused a powerful opposition. Although still in control of Parliament, they naturally felt that that too must soon yield to popular opinion. An alarmist's program had proved successful in times past. The ministers now hoped to profit again by its questionable use.<sup>3</sup>

The insult to the Prince Regent was construed by the government as an attempt at his life. The Opposition in both houses at once demanded more economy in public expenditure. In reply Lord Sidmouth said the Regent would soon present an address showing that a large portion of the people were in a state of disaffection.<sup>4</sup> In preparing this message which reached Parliament on February 3, the Regent gave instructions that there be laid before Parliament "papers containing information respecting certain practices, meetings, and combinations in the metropolis and in different parts of the kingdom, evidently calculated to endanger the public tranquillity, to alienate the affections of His Majesty's subjects from His Majesty's person and government and

1. Martineau Vol. 1 pt. 1 40 - 41

2. Bright N. 1813.

3. Kaye. Vol. 1 pt. 431. 33.

4. Martineau



to bring into hatred and contempt the whole system of our laws and institutions. In both houses the message was immediately referred to Secret Committees. On February 18-19 long drawn out, extravagant reports were presented. According to the report of the committee of the house of Commons, "a traitorous conspiracy has been formed in the metropolis for the purpose of overthrowing by means of a general insurrection, the established government, laws and constitution of this Kingdom, and of effecting a general plunder and division of property." Various schemes had been laid. Prisoners were to be liberated, barracks fired, the Bank and Tower attacked. "It appears clearly that the object is by societies or clubs established or to be established in all parts of Great Britain under pretence of Parliamentary Reform, to infect the minds of all classes of the community---with a spirit of discontent and disaffection---and of contempt of all law, religion and morality, and to hold out to them the plunder of all property as the main object of their effort!"

The report of the house Committee described at great length, the organization, object and end of the Hampden and Spencean Clubs. The former aimed at nothing short of a revolution. In broad, sweeping, but terror inspiring statements they spoke of the activity of the conspirators, the number they had or would yet seduce, their secret oaths and the general confusion, plunder and bloodshed that was eminent. Yet in support of this bitter tirade against conspiracy and sedition, the Committees could point only to one definite act, the unhappy Spa-Field Riot which had been crushed by the Lord Mayor of London with only seven assistants.

Armed with these flaming reports, Sidmouth on February 21st 1817 introduced in the House of Lords a bill for the temporary suspension of the Habeas Corpus Act. Three days later Lord Castlereagh laid before the House three bills of an extraordinary character. The first was for a renewal of the law of 1797 to prevent Seditious Meetings and Assemblies: the second for extending to the Prince Regent "an act for the safety and Preservation of His Majesty's Person," and the third for the better <sup>mutual</sup> preservation and punishment of all attempts to seduce persons serving, etc.<sup>6</sup>

The opposition in both Houses against these measures was determined, but of no avail. ~~The ministers~~ The ministers' alarmists program added to the wide spread general discontent had done its work. The Secret Committees' reports frustrated what effect the Opposition might otherwise have exercised. The powers which the ministers had demanded were given them by a large majority. All four bills were passed.

1. Martineau. Vol. 1. 142. Halyol. Vol. 1. 41. 433.

2. " " 1. 143

3. " " 1. 85-86

4. " " 1. 143-44 Halyol. Vol. 1. 41. 433-34

5. " " 1. 145 Halyol. Vol. 1. 41. 435

6. Halyol. Vol. 1. 41. 435

57. Geo III Cap. 3. 4 March. 1817.

An Act to empower His Majesty to seize and detain such Persons as His Majesty shall suspect are conspiring against His Person and Government.

Whereas a Treason Conspiracy has been planned for the Purpose of overthrowing by means of a general Insurrection, the established Government, Laws and Constitution of this Kingdom, And Whereas, Design and Practice of a treasonable and highly dangerous Nature are now carrying on in the Metropolis and in many other Parts of Great Britain. There-

The acts for the Suspension of the Habeas Corpus and for Seditious Meetings were the ones which met with greatest opposition and the ones least required. The former went into force on March 3rd 1817 suspending the Habeas Corpus act till July 1st. The latter did not pass till March 31st.

The repressive measures taken by the government had the opposite effect from what had been intended. Public agitators found in them much ready material for their harangues. Incendiary fires again became common. Manchester was the point about which renewed discontent was centering. On March 3rd 1817 a meeting was held to protest against the Suspension Act. It was adjourned till the following Monday when every one was advised to provide himself with a blanket. On March 10th 10 or 12,000 persons assembled on Spa-field at Manchester. Their intention was to march to London to petition in person the prince Regent. The night before the meeting took place four of the ringleaders had been arrested under an authority of the Suspension Act. At Stockport the Blanketeers met the Life guards and 40 were arrested. Some 500 did reach Macclesfield, but not more than 20 went farther than the borders of Staffordshire. Thoroughly disheartened with hunger and fatigue, they turned back. One more meeting was planned for March 30th. On the 28th the Secretary of State issued warrants for the arrest of the ringleaders. This act alone was the occasion for its indefinite postponement. The passage of the Seditious Meeting Act at this moment prevented public assemblies and secret ones came to take their place.

At the instigation of the spies of which I shall speak presently, and a few desperate persons, the agitations were kept alive. For June 9th a new demonstration was planned. On June 6th the leaders were arrested at Huddersfield, but a serious riot was the result. Probably the most serious of all the disturbances of this period was the so called Derby Insurrection of June 9th under the leadership of Brandeth, popularly known as the Nottinghamshire Captain. This ignorant man driven to desperation by want and the force of his own distorted convictions, assembled in a lonely field some 20 persons on June 9th. Not fully comprehending the strange words of their leader, they started for Nottingham, stopping at solitary houses to demand arms and compell their occupants to follow. At one place a servant was shot to death. By morning their numbers had increased to 150. When within six miles from Nottingham they heard that troops were coming. At once they threw down their arms and fled in confusion. Thus ended the last of those attempts which the government had assured the people threatened the very existence of the constitution. That the leaders of these wild we may say insane outrages committed by a few desperate or

1. 57. Geo III Cap. 3. date in *History of Long*

2. 57. " III " 19. "

3. Martineau 2d. 1. 41. 143-48. *History*. 2d. 1. 41. 440-441

4. *History*. 2d. 1. 41. 442

5. Martineau 2d. 1. 41. 149-152 *History*. 2d. 1. 41. 446-448.

a. 57 Geo III Cap. 54:

Whereas an Act was passed in the Session of Parliament entitled an Act, — which Act was to continue in force until A. 1<sup>st</sup> day of July 1817. And Whereas it is necessary for the public safety that the Provision of the said Act should be further continued, therefore the full Preservation of the Majesty's sacred Person, and the sacred Person of the Royal Highness, The Prince Regent and for securing the Peace and Tranquillity of this Kingdom. Be it enacted, that the Act may be continued until May 1. 1818.



deluded persons should have been severely punished there can be no question. But to endanger the liberties of all by such extraordinary measures as the Suspension of the Habeas Corpus Act impeaches the <sup>sound</sup> ~~good~~ judgment of the ministers.

Early in June the Prince Regent laid before Parliament fresh information concerning the state of the country. ~~On~~ <sup>On</sup> motion by one of the ministers, the Secret Committees chosen by the two houses ~~at~~ <sup>of</sup> the preceding ~~year~~ <sup>year</sup> February were revived. Although the first report by the Common's Committee was devoted almost wholly to the Spencean Club and the Spa-Field Riot, neither were now mentioned in the second report. It began with and greatly magnified the importance of the Blanketeers' March. Lord Milton, a member of the committee who had disagreed with the majority, has left on record that, "precautions were used to prevent the insertion or omission of anything which by being inserted or omitted would have the tendency to disalarm the country." In speaking of the proposed meeting at Manchester on March 30, the Secret Committee of the House of Lords said, "a general insurrection was intended to have been commenced at Manchester. ~~This~~ This atrocious conspiracy was detected by the vigilance of the magistrates and defeated by the apprehension and confinement of some of the ringleaders a few days before the period fixed for its execution."<sup>2</sup> Both committees agreed that the papers referred to them afforded, "but too many proofs of the continued existence of a traiterous conspiracy for the overthrow of our established government and constitution and for the subversion of the existing order of society."<sup>3</sup> The ordinary powers of the law were not yet sufficient remedy for the danger.

A bill for the Continuance of the Suspension Act was accordingly introduced. The Opposition in both Houses ~~was~~ again active. Failing to prevent its ultimate passage, they labored to limit its duration, and then to except its extent to Scotland. <sup>at</sup> Their endeavors were in vain. The Huddersfield Riot and the Derby Insurrection which unfortunately occurred at this critical moment were so magnified by the Secret Committees' reports that opposition was useless. The law bearing the date of June 30th 1817 continued the Suspension Act till March 1st 1818.<sup>5</sup>

The part taken by Viscount Sidmouth, Secretary of State for Home Affairs during this period of disturbances, must ever stand in history as a charge against his wisdom. "Kindly as Lord Sidmouth was by nature, his administration was severe and, during ten years of lawlessness and misery, he ruled with unwavering sternness."<sup>6</sup> There can be no question that he was

1. *Present State of Public Affairs*. Edinburgh Review. Vol 25 H. 576-47
2. *Martineau* Vol 1. H. 146-47.
3. *Napole.* " 1 " 444.
4. " " 1 " 444.
5. 57 Geo. III Cap. 33: stat given in *Statutes at Large*
6. *Dict. of Nat. Biog.* Art. Henry Addington.

was aroused to an undue sense of the danger the various riots and insurrections had occasioned. He was convinced that only the strongest measures would restore peace and order. For nothing has he been condemned so much as for his spy-system. Secret information was brought in by disreputable persons who were encouraged in this questionable work by liberal rewards. In many cases they instigated the plots which they later revealed. Our knowledge of the Spencean Club and its plans rest largely on Castle who had taken an active part in the Spa-field Riot. Oliver and his representatives certainly did much to encourage the Manchester and Huddersfield Riots and the Derby Insurrection. It was very largely on the exaggerated accounts of Oliver and Castle that the Secret Committees had based their reports in February and in June.

Though successful in pressing extraordinary measures through Parliament, the government met a long series of defeat at the hands of the Common Juries. There is no doubt that those who had participated in the Spa-field, Manchester Riots and Derby Insurrection deserved severe punishment. But by the government in its desire to make examples of these offenders, went much too far in prosecuting them for High-Treason. True bills were by the Grand Jury of Middlesex against the elder Watson, Thistlewood and two other participants in the Spa-field Riot. Watson was acquitted by the petit jury in June and the Attorney General refused to prosecute the rest.<sup>3</sup> These persons deserved severe punishment for sedition and riot, but by dignifying their crime by the name of High-Treason, they were allowed to go free. The Manchester Blanketeers were discharged in spite of the fact that the Secret Committee had declared them guilty of insurrection and rebellion. Of the 24 persons taken prisoners taken at Huddersfield Riot the Grand Jury failed to find true bills against eleven; ten were declared not guilty; one liberated on bail while the remaining two were held in prison without bail or trial under the authority of the Suspension Act. Having completely failed in their efforts till now, the government redoubled their energies in the state trials against the Derby Insurrectionists. These men had committed a grave offense. But instead of indicting him and his associates with murder, they were charged with, "Levying war against the King." Brandeth and two others suffered the penalty for High-Treason; eleven transported for life, four for 14 years and five were imprisoned.<sup>5</sup> This marks the end of the state trials against

1. Martineau. Vol. 1. p. 83.

2. " " 1 " 156-57.

3. Nulph. Vol. 1 p. 443.

4. " " 1 " 443.

5. " " 1 " 446-45.

a. Resignation <sup>did</sup> not take effect until nearly year after.

persons who had taken part in the disturbances beginning with Spa-Field Riot of December 2ed 1816 and closing with Derby Insurrection on June 10th 1817. In writing of the, Miss Martineau says: "We know the executions at Derby----with the exception of Brandeth who had dyed his hands in blood---- left a permanent conviction upon the minds, not only of the <sup>low</sup> persons, but of the best informed and most influential in the midland district that these unhappy men were state. There was a profound belief that the ignorant violence of these ~~these~~ deluded creatures was criminal, but that it was not High-Treason!"

In the meantime another series of state trials had done more than those above mentioned to discredit in the minds of the people, the ministers, especially Lord Sidmouth. A host of libellous indecent writers had sprung up. Prudence would have counseled the government to leave these persons to the public condemnation which would have surely followed, and not to have honored them by state trials. Sidmouth however had determined to strike at what he considered to be the root of disorders by a rigid enforcement of the laws respecting the liberty of the press. It was with this object in view that he issued on March 27th 1817, his Circular Letter advising the Justices of the Peace to prevent the circulation of libellous and blasphemous matter. He said that in the opinion of the law officers, "a Justice of the Peace may issue a warrant to apprehend a person charged before him upon oath with the publication of libels of the nature in question and compell him to give bail to answer the charge." The Lord Lieutenants were requested to read the Circular at Quarter Session and to urge the magistrates to act accordingly. This interpretation of the law by the Secretary of State was condemned in both Houses of Parliament.

In the prosecutions for libel the government met with uniform failure. Scurrilous writers were brought into public view. The most noted perhaps of these trials was that of the profane parodist William Hone on December 18-19-20 1817. In spite of the vigorous efforts made by Justice Abbott and Lord Ellenborough, the Chief Justice, who presided at the trial, Hone was acquitted on each of the three counts brought against him. The hall and street rang with his praise and the public went so far as to raise a liberal subscription for him and his family. Lord Ellenborough felt so keenly this defeat that he at once tendered his resignation. The almost uniform failure to obtain conviction in the state trials both for libel and for treason threw much discredit on the administration. Matters were at this pass when Parliament met on January 27th 1818.

1. Martineau Vol. 1. p. 159.
2. ~~Dial of Hel. Socy.~~ <sup>which Henry Addington</sup>
2. Martineau Vol. 1. p. 160. <sup>Walpole Vol. 1. p. 458.</sup>
4. May Vol. 2. p. 345-48.
5. Martineau Vol. 1. p. 160. <sup>71.</sup>
6. Statute at Large Vol. 58. p. 11.



The return of good harvests in 1817 had done much to relieve the suffering of the previous year. Labor found employment, wages rose and prices for the necessities of life fell. The outrages of a few misguided wretches had aroused all classes against such acts of violence as those which had characterized 1812 and 1816.

At the opening of Parliament, the Prince Regent congratulated the nation on its happy return to "peace and tranquillity". Immediately after the reading of the address, the Opposition in both Houses demanded the instant repeal of the Suspension Act.<sup>5</sup> Assurance was given that a motion to that effect would be introduced the following day. The bill was passed by the Lords on the 28th, by the Commons on the 29th,<sup>5</sup> and received the king's signayure on the 31st, four days after the ~~extraordinary opening of Parliament~~ opening of Parliament. It being, "deemed no longer necessary for the public safety," the Suspension was repealed one month before the date fixed at its passage on June 30th 1817.<sup>4</sup> In both Houses the Opposition denied the necessity of the extraordinary measures and condemned part the government had taken in the state trials. Lord Lansdowne declared that there had been no conspiracy, that there had been no general disposition toward insurrection, and that the Derby Insurrection was the only apology the ministers could offer for the extraordinary measures. It was not the Suspension of the Habeas Corpus Act that had prevented the spread of disaffection, but the due administration of the laws. Sir Samuel Romilly, the Opposition leader in the House, said, "that the late Suspension of the Habeas Corpus Act was a most unnecessary and Mischievous measure" and would form, "a most dangerous precedent!"<sup>6</sup>

The extraordinary measures of the preceding year, was practically the sole topic for discussion during the first six weeks of the session. The Regent laid before the House of Commons on February 2ed and before the Lords the following day, green bags containing papers relating to the state of of public affairs.<sup>7</sup> The papers were referred to Secret Committees composed for the most part of members who had served in a like capacity the preceding year. On February 23-28 the committees laid before their respective houses almost identical reports.<sup>8</sup> Feeling that their reputations were at stake, they now adhered to their earlier accounts. They admitted however that sedition had been confined to the lowest artisans, that their number had been greatly exaggerated by the leaders with the view of encouraging their followers, and that the great masses had remained untainted. Still they clung to the idea that a great danger had confronted the nation. The Secret Committee in the House of Lords in reviewing

1. *Halpsh. Vol 1 H. 468.*
2. *Martineau Vol 1 H. 216.*
3. *" " " 217.*
4. *18 Geo. III Cap. 1.*
5. *Martineau Vol 1 H. 218.*

6. *Halpsh. Vol 1 H. 465.*
7. *Martineau Vol 1 H. 223.*
8. *Halpsh. Vol 1 H. 465-66*  
*Martineau Vol 1 H. 223-26.*

the Derbyshire rising said that an atrocious spirit had been manifest, that their object was the overthrow of the established government and laws! The report of the Lower House was characterized by stronger statements. In the opinion of both the vigilance of the police, the decision of the government together with a marked improvement in industrial conditions had alone crushed out sedition. Considering the nature of the offences and the vast powers which had been intrusted to them, they believed that the ministers should be praised for their leniency. In view of the Suspension Act which had been a special object of attack, they found that aside from the persons who had been indicted by the Grand Jury, warrants had been signed by the Secretary of State for ten persons who had never been arrested, and for 44 who had not been brought to trial. Of the latter seven had been released on examination while the remaining 37 had been detained only in consequence of charge made under oath.<sup>2</sup>

On the 25th of February there was laid before the Lords a bill entitled "An act for indemnifying Persons who since the Twenty Sixth Day of January One Thousand eight hundred and seventeen have acted in apprehending, imprisoning, or detaining in custody Persons suspected of High-Treason or Treasonable Practices, and in the Suppression of tumultuous and unlawful Assemblies."<sup>3</sup> Thought backed by the reports of the Secret Committees the ministers wisely hesitated to introduce such a measure. Lord Montrose, Master of Horse, was prevailed upon to undertake that task.<sup>4</sup> Much determined though ineffective opposition was developed. In the Upper House Lords Liverpool and Eldon were the principal speakers in defence of the bill. Marques Lansdowne, Lords Erskine and Holland against.<sup>5</sup> The latter denied the necessity of the Suspension Act and declared the ministers were not entitled to so far reaching protection as the proposed act would afford. As on previous occasions of Indemnity Acts, its adherents argued that without its protection the ministers and others would be forced in their own defense to reveal information which must be dangerous to public safety if disclosed. The bill was then passed by the Lords on March 5th by a vote of 93 to 27.<sup>6</sup> On the 13th it received the approval of the Commons 82 to 23<sup>7</sup> and became a law on March 17th 1818.<sup>8</sup> In the Lower House the measure was attacked by Sir Samuel Romilly, Lambton and Brougham. Its chief supporters Samuel Shepard (Solicitor General), William Garrow (Attorney General), George Canning and Mr. Lamb.<sup>9</sup>

Thus ended the final period for the Suspension of the

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| 1. Martineau Vol. I H. 223. |   |
| 2. " " 224.                 | Halph. Vol. I H. 466. May. Vol. 3. H. 17. |
| 3. Halph. " 1 " 446.        | 7. Martineau Vol. I H. 227.               |
| 4. Martineau " 1 " 226.     | 8. 58 Geo. III Cap. 6 del. given          |
| 5. " " 222.                 | 9. Martineau Vol. I H. 228.               |
| 6. " " 227.                 |   |

Habeas Corpus Act in England. Though <sup>it</sup> ~~England~~ has since passed though more serious crises than that which faced the government in 1816-1818, the greatest of all guarantees to personal liberty has never been violated since that time. Much adverse criticism has been pronounced upon the wisdom of its suspension in 1817. There was not the slightest danger of an invasion, and at this distance of time, we can scarcely conceive that prudent men should fear any dangerous insurrection. It is true that the participants in the disturbances at this time deserved severe punishment, but existing laws were certainly adequate for the occasion. It cannot be denied that the ministers were unduly frightened at the turn of events had taken, that they felt that their influence was slipping away and finally that they realized that a general alarm might be of service to them. On the other hand they certainly were not guilty of deliberately spreading false reports for purely selfish motives. Frightened they allowed themselves to be made the dupes of such disreputable men as Castle and Oliver and took little pains to investigate the truth of their accounts. The Act of Indemnity was the natural, though not the necessary sequence to the Suspension Act. Parliament now realized that arbitrary measures it had passed the previous year were over hasty and unnecessary and that the people would soon demand an investigation. Feeling that they themselves had been very much in the wrong the members of both Houses believed that the best way to dispose of the delicate question was to pass an Act of General Oblivion.

### *Conclusion* *Chapter VII*

~~We see that the practice of Habeas Corpus which was crystallized the well known Act of 1679 finds its origin in one of the fundamental~~

Thus we see that the practice of the Habeas Corpus which was crystallized by the Act of 1679, finds its origin in one of the fundamental principles of Anglo-Saxon Law, -namely the liberty of the individual. Slowly developing through the period of absolutism, as a Common Law practice. It was given definite form by 31st Chas. 2. Cap. 2, modified by the Bill of Rights and perfected, so far as human institutions are perfect by the Act of 1817.

The Habeas Corpus has and will continue to stand as the most effective guarantee of personal liberty. Its suspension therefore can be justified only on grounds of gravest public danger. That such times may and have accured, I think that there is little question. It has been the object of this

Unlike the single Suspension by the Federal Government  
in United States which was the work of Lincoln  
as president; in England Suspension has always  
been by act of Parliament. Acts of Indemnity  
have not uniformly followed Suspension Acts.  
Such Acts were however passed. 1713; 1746  
1801 and 1805. It should be noted that Indemnity  
Acts were used by the Whigs two times in five by  
the Tories each time since the Indemnity Act of  
1801 dated back to ~~1801~~ 1793.



paper to show what were the motives leading to suspension and what were the results. The judgment as to whether suspension was justified by the circumstances in each case has been left very largely to the reader.

*omit clause*  
Though its Suspension in Ireland has been frequent, particularly within the last century; since the passage of the Act of 1679, it has been suspended in England at nine periods only. Passing over the time of the American Revolution when the Suspension Act was a part of a general war policy against the Colonists and affected English subjects in Great Britain but slightly, the first five Suspensions were the work of the Whigs, the last three, that of the Tories. The former were co-incident with, and justified by, the five severe attempts on the part of the Jacobites to restore the Stuarts to the English throne. In each period, invasion was pending and a wide-spread discontent was threatening to break out in a general insurrection. That the Habeas Act should be suspended in case these dangers were really eminent, there can be no denial. Whether the government interpreted aright the extent of these dangers has been left to the judgement of the reader through the light of the preceding discussion. The Whigs certainly were sincere.

During the periods of 1794-95; 1798-1801 and 1817-1818, the Whigs were important only as a party of opposition. The Tories therefor were wholly responsible for the last three Suspensions Acts. The motives which actuated the Tories to employ such extreme measures were very much different as we have seen from those which had influenced the Whigs. Though there may have been some slight apprehension in 1794 and 1798 that Napoleon would invade England, the fear had little weight. It was the spread of French Revolutionary ideas among the lower classes and the subsequent formation of Secret Societies that were the real causes. There were sufficient reasons for serious apprehensions and strict enforcement of the laws. But I doubt that anyone who has carefully studied the conditions of the time would defend the enactment of a measure which can be justified only when the very existence of the government is endangered.

The Suspension in 1817-18 was even less justifiable than that of the preceding period. Again it was used to crush grave social and economic disturbances among the lower classes. there was not the slightest danger of an invasion and so far as we can see now, no general insurrection contemplated. It was unreasonable fear and hope of profit in an alarmists' program that actuated the Tories to their course. The real extent of public danger certainly did not justify such extreme measures as ~~they took~~ *they took*. I believe that a realization of that fact has had much to do in preventing its subsequent suspension though, though England has since passed through a number of more serious crises than that which faced the country in 1816-1818. +

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